CANADIAN CARGO DIVERSION

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2414

TO AMEND THE SHIPPING ACT, 1916, TO PROVIDE FOR JURISDICTION OVER COMMON CARRIERS BY WATER ENGAGING IN FOREIGN COMMERCE TO AND FROM THE UNITED STATES UTILIZING PORTS IN NATIONS CONTIGUOUS TO THE UNITED STATES

MAY 25, 1982

Serial No. 97-121

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

96-047 O WASHINGTON: 1982

S261-60

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CANADIAN CARGO DIVERSION

TUESDAY, MAY 25, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 235, Russell Senate Office Building, Hon. Slade Gorton (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Terry Spilsbury, staff counsel, and John D. Hardy, minority staff counsel.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. This morning we will hear testimony on a proposal to include within the scope of the Shipping Act intermodal shipments of cargo originating in or destined to U.S. inland points but transported through ports of contiguous countries. My distinguished and dedicated colleague, Senator Inouye, introduced a bill, S. 2414, to arrest the increasing volume of U.S. cargo, traditionally routed through east coast ports, that now moves through the Port of Montreal.

This proposed extention of Federal Maritime Commission jurisdiction to receive and enforce tariffs of ocean common carriers operating their vessels wholly outside the United States, but marketing their services inside the United States, deserves our careful attention.

As most people attending this hearing know, the Commerce Committee this past month unanimously approved S. 1593, a bill that revises the Shipping Act of 1916. Several witnesses addressed the cargo diversion issue at our hearings on S. 1593 last September. Opinion on the proposal has been divided, though, and this committee was not persuaded to address it in its revision of the Shipping Act. The report accompanying S. 1593, which was filed with the Senate today, makes this point clearly.

The issue, we believed, was sufficiently delicate and controversial that it deserved a hearing of its own. Since that decision, two House committees, Merchant Marine and Fisheries, and Energy and Commerce, have reported out H.R. 3637, with amendments that have dulled some earlier objections. Nevertheless, we are aware of some sensitivity in terms of our relations with Canada as well as continued controversy domestically.

This hearing is designed to educate us in the Senate regarding the various views on this point. I, in any event, will be listening closely to determine whether this extension of regulatory authority

is warranted at a time at which a primary national objective is to eliminate regulations tending to impede the free flow of our import and export commerce.

Senator Inouye.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. I wish to thank the chairman of the subcommittee for scheduling these hearings.

Our maritime industry is in serious difficulty, and traditional forms of Government assistance are being severely curtailed. It is, therefore, especially incumbent on us in the national interest to insure that as a Government we do not permit loopholes in our laws to exacerbate the perilous situation in which the industry finds itself.

The existence of a loophole in our laws is serious enough, but when the carrier who takes advantage of it has the further advantage of being subsidized by an instrumentality of a foreign government, it would be national folly to ignore the potential consequences. Some statistics from the Maritime Administration show how serious this matter is.

In 1974, over 1.2 million tons of U.S. cargo, valued at $1.3 billion, used Canadian ports. In 1980, nearly 2.2 million tons of U.S. cargo moved via Canada, and its value was $5 billion. The North Atlantic Ports Association estimates that in 1979 this trend translated into lost activities for American interests as follows: 800 lost vessel calls; 140,000 lost containers; 54,000 lost truck movements; 80,000 lost rail movements; and 5,000 waterfront and related jobs.

I have noticed over the years that in some quarters of our Government there is a reluctance to insist that countries wishing to do business in the United States comply with our laws. We encountered this kind of opposition when we enacted the Control Carrier Act, and when we strengthened our laws against illegal rebating. And when the FMC went to court to enforce the Control Carrier Act against the Soviet shipping company—the Baltic Steamship Co.—the Department of State and the Department of Justice filed amicus briefs on behalf of the Soviets. I have yet to see any of the governments of our trading partners act so zealously to protect the interests of U.S. operators.

In recognition of this serious problem, the committee and the Senate unanimously passed a provision similar to this bill as part of the Ocean Shipping Act of 1980, S. 2585, in the 96th Congress. The House failed to act, however. As we have seen, Mr. Chairman, the problem has grown even more serious since then.

Thank you very much, sir.

[The bill follows:]

II

97TH CONGRESS
2D SESSION

S. 2414

To amend the Shipping Act, 1916, to provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 13), 1982

Mr. INOUYE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To amend the Shipping Act, 1916, to provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Shipping Act, 1916, as amended (46 U.S.C. 801), is amended by adding the following new paragraph between the first and second paragraphs of section 1 thereof:

"The term 'common carrier by water in foreign commerce' includes a common carrier engaged in the ocean transportation of property originating in or destined to a

United States point by way of a port in a nation contiguous to the United States and that—

"(a) advertises, solicits, or arranges, directly or through an agent, within the United States, for such transportation; and

"(b) engages, directly or through an agent, in the transportation of such property between a point within the United States and a port in a nation contiguous to the United States.".

SEC. 2. Each common carrier included within the meaning of the term "common carrier by water in foreign commerce" by virtue of this Act that is in operation on the date of enactment of this Act shall initially file its tariff or tariffs with the Federal Maritime Commission in accordance with section 18(b)(1) of the Shipping Act, 1916, as amended (46 U.S.C. 817(b)(1)), within ninety days after the date of enactment of this Act. Failure to file within this period is a violation of section 18(b)(1) of the Shipping Act, 1916. If timely filed, these tariffs become effective on the date filed. If not timely filed, the tariffs become effective thirty days after the date filed.

SEC. 3. (a) Notwithstanding any other provision of law, no common carrier included within the meaning of the term "common carrier by water in foreign commerce" under the Shipping Act, 1916, shall be required in any tariff filed with

the Federal Maritime Commission to state separately or otherwise reveal in such tariff the portion of such tariff attributable to transportation between the point of origin or final destination in the United States of the property transported and the United States port or the port in a nation contiguous to the United States by way of which such property is transported.

(b) Nothing in this Act or the amendments made by this Act shall be construed to require any common carrier by water in foreign commerce, as defined under section 1 of the Shipping Act, 1916 (46 U.S.C. 1801), to reveal any information with respect to transportation of any property between a point of origin or final destination in the United States and a United States port or a port in a nation contiguous with the United States, except insofar as the costs of such transportation comprise an undifferentiated portion of the whole amount of any tariff required to be filed under section 18(b)(1) of the Shipping Act, 1916, as amended (46 U.S.C. 817).

(c) Nothing in this Act or the amendments made by this Act shall be construed to extend to the Federal Maritime Commission any jurisdiction over or authority to regulate rail carriers.

SEC. 4. Section 18(b)(1) of the Shipping Act, 1916, as amended (46 U.S.C. 817), is amended by inserting "or points" after "United States ports" in the first sentence.

Senator GORTON. Thank you, Senator. We will begin by hearing from Judith T. Connor, Assistant Secretary for Policy and International Affairs of the Department of Transportation.

STATEMENT OF JUDITH T. CONNOR, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY PETE SCHUMAIER

Ms. CONNOR. Good morning. Mr. Chairman, I am accompanied here today by Pete Schumaier, who is a member of my staff working on maritime matters, and I am pleased to have this opportunity to be available and be able to present the Department's position and comment on S. 2414, which is a bill to amend the Shipping Act of 1916, to provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States.

The bill would alter the present Shipping Act definition of "common carrier by water in foreign commerce" to include carriers that transport cargo to or from the United States by way of a port in a contiguous country if the carrier, first, advertises, solicits, or arranges, directly or through an agent, within the United States for such transportation and, second, engages directly or through an agent, in transportation of such property between a point within the United States and a point in a nation continguous to the United States.

The Department of Transportation has joined the Departments of State, Commerce, Justice and the Council of Economic Advisers to oppose similar legislation which is before the House of Representatives. We likewise oppose the enactment of S. 2414.

The bill is apparently intended to reverse the decision of the U.S. Court of Appeals in *Austasia Intermodal Lines Ltd.* v. *FMC.* In that case, the court held that the Shipping Act did not give the FMC jurisdiction over a firm that solicited cargo in the United States for a common carrier service from Detroit, Mich., overland to Vancouver, British Columbia, and thence by ship to foreign destinations. The Court reasoned that no U.S. ports were utilized by the carrier on its own route or a through route in which it participated.

The principal effect of this legislation would be to add regulation to containerized ocean transport from the U.S. Midwest through Canada to Europe by requiring the filing and enforcement of tariffs for such shipments by the FMC. Nearly all carriers which transport cargo to or from the United States by way of a contiguous country would meet the qualifying conditions and would be considered a common carrier by water and, therefore, subject to the authority of the FMC under the Shipping Act of 1916. The Department of Transportation believes that the proper course of action is to minimize, not to expand, regulatory jurisdiction over the maritime industry.

Mr. Chairman, as you are aware from Secretary Lewis' letter of February 5, 1982, an integral part of the administration's position in maritime regulatory reform is the elimination of the requirement that any ocean tariff of any kind be filed with and enforced by the Federal Maritime Commission.

While we recognize that the aim of S. 2415 is to make it possible for everyone to play by the same rules, we do not believe that such a motivation should result in the extension of regulatory activities at a time when the administration and the preponderant majority of interests involved agree that regulatory burdens should be relaxed. The objective of permitting all to play by the same rules can be accomplished by eliminating the requirement for tariff filing with the FMC for all parties, rather than by extending that requirement to added parties.

We believe that the solution should be to reduce the regulatory burden on those carriers offering intermodal service through U.S. ports, rather than to increase regulation on the less regulated segments. We continue to hold to the position that the elimination of FMC filing and enforcement of tariffs will permit the kinds of arrangements between shippers and carriers which realize the maximum efficiencies possible.

While we are aware that there has been a growing volume of containers moving over certain Canadian ports, we also know that nearly equal volumes of Canadian containers are handled through U.S. ports. This administration supports a free and competitive regime for international trade in both goods and services. This two-way trade in container transportation movement represents services used and desired by consumers and shippers in both countries.

Finally, since the State Department is not testifying on this bill, I would like to add that we have been advised by the State Department that there may be foreign policy problems resulting from this legislation.

Mr. Chairman, this concludes my testimony. I would be pleased to respond to any questions.

Senator GORTON. In respect to your last comment, what kind of communications have we received from Canada or, for that matter, from other countries on the subject?

Ms. CONNOR. As far as I know, Mr. Chairman, the State Department has received on this matter specifically a diplomatic note from the Canadian Government which strongly objects to the provision.

Senator GORTON. What kind of action would you expect from either Canada or Mexico if this bill were enacted? Could either of them retaliate? Could such retaliation hamper the movement of Canadian cargoes through U.S. ports?

Ms. CONNOR. It would be my judgment that the Canadians, of course, could retaliate. Speculating on how they might is more difficult, in what degree or measure is difficult. It would be my suspicion that enactment of S. 2414—rather than hampering U.S. goods through Canadian ports—would hamper Canadian goods coming through American ports.

Senator GORTON. Does Canada have any laws or regulations analogous to our FMC jurisdiction?

Ms. CONNOR. I am not familiar with their regulatory scheme.

Senator GORTON. Is the answer no, they do not or no, you do not know.

Mr. SCHUMAIER. They do not. They do not regulate Canadian commerce coming through U.S. ports.

Senator GORTON. Would you expect the effect of S. 2414 to be inconsistent with or to compromise any other efforts between the United States and Canada in any other fields than this?

Ms. CONNOR. In my function in the Department I have oversight of all international matters and we do have a number of outstanding issues with the Canadians at the present time in transportation-related activities. Any one can overlap. I am frankly concerned that we are generating considerable opposition from the Canadian government in trucking areas and aviation areas. In matters such as this one, to which they have taken such a strong objection, I would suspect that enactment of S. 2414 would not be taken lightly.

Senator GORTON. You again repeated your Department's argument in favor of ending tariff filing. In that light, if we were inclined to extend FMC jurisdiction to intermodal shipments moving through Canadian ports, does the argument for eliminating tariff filing with the FMC become more compelling?

Ms. CONNOR. It would become more compelling in the sense that it would be most consistent with our desire to eliminate tariff filing completely, if I understand your question.

Senator GORTON. Well, I think you understand the question. You do not want us to do it, but if we were to pass this, then you would argue even more forcefully for the end of tariff filing.

Ms. CONNOR. More forcefully, of course.

Senator GORTON. But let us take the other side of that question. Granting your position that in S. 1593 we should eliminate tariff filing and enforcement, but assuming that S. 1593 passes in the form in which it finds itself on the Senate floor now, in that case does not the argument of equity in regulation favor the passage of S. 2414?

Ms. CONNOR. Well, of course, as a spokesman for the administration I would not want to give up lightly on being able to eliminate tariff filings. We would still like to see that as an objective. But assuming, as you have suggested, that it does not pass, I do not think it would lead us to thereby wanting to see further regulation expanded by expanding the FMC jurisdiction.

With respect to equity, it is our understanding that Canadian shippers are using U.S. ports in approximately the same extent to which U.S. shippers are using Canadian ports and we feel—and I am quite sure the Canadians would share our concern—that there is a genuine question of equity with respect to extension of the jurisdiction of a U.S. regulatory body to Canadian operators.

Senator GORTON. Thank you. Senator Inouye.

Senator INOUYE. Thank you very much. According to the most recent MarAd statistics, in 1980, nearly 2.2 million tons of U.S. cargo worth $5 billion moved via Canada and I am certain you know that U.S. cargo may continue to move via Canada even if this bill is enacted.

Isn't it true that under our present laws, U.S. vessels which receive subsidies—and all of our operators, with the exception of Sea-Land, receive such subsidies—could not compete in Canada for that cargo?

Let's put it another way. Can a shipping company such as Lykes offer a service between Montreal and Antwerp? It is receiving subsidy.

Ms. CONNOR. It would be our judgment, which we would need to confirm with the Maritime Administration, that if the subsidy contract prohibited such service then it would not be able to do so. What we are not sure of is whether or not there are any occasions when such subsidy contracts do not include that kind of provision.

Senator INOUYE. Well, I can assure you that Lykes could not offer service between Montreal and Antwerp. In other words, we presently have a situation where the major portion of U.S. cargo shipped from U.S. ports moves on foreign flag vessels, and only one U.S. carrier is eligible to compete for the remaining U.S. cargo which is shipped through Canadian ports. Is that correct?

Ms. CONNOR. That would be correct.

Senator INOUYE. Is this situation consistent with the mandate under the law that U.S. vessels carry a substantial portion of our cargo?

Ms. CONNOR. It is unfortunate, of course, that we do not have more unsubsidized carriers in our country and that the subsidies by definition restrict the routes that those carriers are able to operate on. I think that I could only indicate that it would be our objective to develop the U.S. flag carrier in such a way that we do not face the situation in the future, but to extend the regulatory jurisdiction of an independent body would not be, in our opinion, consistent with trying to develop a stronger merchant marine.

Senator INOUYE. Why is our country always so sensitive about the sensitivities of other countries? Are the other countries concerned about our sensitivities?

Ms. CONNOR. That's a philosophical question.

Senator INOUYE. It is not a philosophical one. It is real.

Ms. CONNOR. Yes, sir, it is a real question. I am not sure that we are always so sensitive in the international arena to the needs of foreign countries. In this instance, however, I think the Canadian Government has a legitimate concern about jurisdiction of our law and we are not inclined to want to see that jurisdiction apply in international markets.

Senator INOUYE. I remember the long debate that we had to suffer through on the bill to control rebating. I am certain you are aware of that. We have a law that says thou shalt not rebate. And if you do, you shalt be fined. And we were aware that vessels of other countries operating in our trades were doing this. Whenever we attempted to serve them with a subpena, however, they would say sovereignty. You cannot touch us.

So who gets sued and who gets fined—just Americans. Is that the way we should run our shipping industry? You know, with those kinds of friends, we do not need enemies, I think.

Ms. CONNOR. No, that is correct. However, in the shipping industry particularly it would appear that while we will not want to permit rebates as a matter of our own economic convictions, we are somewhat out of step with the way that the rest of the world has been running their operations. And to a large degree foreign governments have not been as actively involved in the management and oversight of the shipping activities of their carriers.

It is the objective of the administration in its regulatory reform proposals to put us on a better footing so that we would be more compatible with foreign countries. In this instance, it is the United States that is more out of step with foreign countries than vice versa.

Senator INOUYE. You are suggesting now that we should permit rebates?

Ms. CONNOR. No, sir. As I indicated, I feel that activities such as rebating are activities that are abhorrent to our own economic convictions. So rebating would be one specific activity we would not permit. But it is not dissimilar from our laws that constrain some of our executive activities overseas. We are enforcing our own convictions to a large degree and they apply to the U.S. corporate activities and there is no question that jurisdictional dispute will always be there.

Senator INOUYE. But we are aware that the other countries close their eyes to rebating.

Ms. CONNOR. In shipping that is true.

Senator INOUYE. I am certain you are aware that the most effective check on rebates would be tariffs.

Ms. CONNOR. That is accurate and it is for that reason that the administration has proposed that tariffs be published, that there be a requirement that they be published, as opposed to filed with the FMC.

Senator INOUYE. How do you publish an illegal tariff?

Ms. CONNOR. You would not publish an illegal tariff. You would publish what you were holding out to the public.

Senator INOUYE. And we pass the word around that for you good people we will go under the table.

Ms. CONNOR. That is accurate, but under our law, as I understand it—I am not a lawyer, but as I understand it, a published price is one in which the purchaser of the good or service can then take recourse in court if in fact they are not getting the price that is being held out.

Senator INOUYE. FMC has no enforcement power?

Ms. CONNOR. Not under that scenario.

Senator INOUYE. Why don't we just wipe out the FMC? You are pulling out all the teeth now.

Ms. CONNOR. That would not be an abhorrent thought as far as we are concerned. I am not suggesting it should be done overnight, but——

Senator INOUYE. It is your hope that the FMC goes out of business?

Ms. CONNOR. The administration in general is interested in seeing a contraction of independent regulatory bodies and the FMC is among those agencies that it has been thinking of in those terms.

Senator INOUYE. You are suggesting that shipping should be controlled by the laws of the seas, even if they are piracy?

Ms. CONNOR. No; we would like to see more independent activity—independent from U.S. Government regulation. We are quite convinced that the regulation and the subsidies that have been extended to the maritime industry in the past have been counterproductive and, in addition, the regulatory regime is not in the slight-

est consistent with what our U.S. carriers must face relative to their foreign competitors.

So we would like to see the opportunity for carriers to meet in conference to provide independent control over their own operations.

Senator INOUYE. Would you then be in favor of repealing the cargo preference laws?

Ms. CONNOR. Of repealing the cargo preference laws?

Senator INOUYE. Yes.

Ms. CONNOR. For U.S. impelled cargo? At the present time we are not in favor of repealing those laws. In that instance, again, to elaborate on that, government-impelled cargo is a phenomenon that we do see on a worldwide basis, both with shipping and with aviation where foreign governments implement that kind of philosophy. It is our concern that we should make sure that our carriers have the same kind of opportunity to ship our Government-impelled goods.

Senator INOUYE. You responded to one of the Chairman's questions by expressing your concern that Canada might retaliate. Have we ever retaliated against actions taken by other countries that were not in our interest and which were grossly discriminatory?

Ms. CONNOR. In shipping?

Senator INOUYE. Yes.

Ms. CONNOR. I would have to reply to that question for the record.

[The following information was subsequently received for the record:]

When other nations take actions in the shipping (or other) area which the U.S. believes are discriminatory, the U.S. government first seeks to resolve the matter through diplomatic efforts. As a result, we have been able to negotiate settlements without taking government to government retaliation. For example, when Guatemala proposed a discriminary shipping tax measure, the U.S. threatened to retaliate with a tax that would affect Guatemalan trade. As a result, Guatemala withdrew its tax. Similarly, the U.S. threatened retaliation when Ecuador sought to prohibit service by a U.S. company which had been active historically in the U.S.-Ecuador trade; as a consequence, the discriminatory action was withdrawn.

Senator INOUYE. I think it is simple to say we have not. Can you think of any other country that ships foreign assistance—food, equipment and such—by vessels other than their own if their own vessels are available?

Ms. CONNOR. I am not personally familiar with every other country. I would certainly hazard a guess that to the extent there is space available on their own ships they use their own ships and so do we under the law, to the extent that there is availability.

Senator INOUYE. Have you ever heard of any other country that puts its ocean going mail out for competition bid?

Ms. CONNOR. I am not familiar with any other country that would do that.

Senator INOUYE. Who carries some of our surface mail across the Atlantic to Europe? Is it all carried by Sea-Land or U.S. Lines or Lykes? I will make it easier for you. Some of it is carried by a Polish shipping company.

Ms. CONNOR. I am not familiar with the way the Post Office puts out its mail.

Senator INOUYE. That is our law.

Ms. CONNOR. I suspect it is under competitive bid, is it not? Yes, it is the same in aviation.

Senator INOUYE. Do you think the Canadians do that, or the British, or the French, the Germans, Russians?

Ms. CONNOR. I would suspect they do not. I am not attempting to avoid your question. I genuinely do not know the answer, but my experience and what I have seen would suggest that they do not.

Senator INOUYE. What I have been doing as one little Senator here is to see what can be done to give our shipping companies just an even break. A little more than 50-50—60-40 would suffice.

I have many other questions, Mr. Chairman. I would like to submit this for the record.

Senator GORTON. You will receive additional questions in writing, the prompt response to which we would appreciate. With that, we thank you for coming, Ms. Connor. Next we will hear from Jonathan Benner, the general counsel of the FMC.

Ms. CONNOR. Thank you very much.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS THERETO

Question. In 1978, Congress enacted the Controlled Carrier Act, which provided for the regulation of rates or charges by certain State/owned carriers in the foreign commerce of the United States.

Since most State-controlled carriers are not required by the investment community to earn profits to ensure their survival. They have a distince rate-making advantage. The reason for enacting this legislation therefore was to ensure fair and open competition in our trades.

Cast has established a system whereby the relatively short haul of U.S. cargo to the Canadian border is accomplished by its alter-ego, I.C.C. motor carriers; while the long haul inland transportation is accomplished via Canada by Canadian National railway interests over the canadian port of Montreal; with the transoceanic portion provided by Cast.

According to information the committee has received, the Canadian National Railway (CNR), which is a Government-owned corporation, invested $12 million in Cast in 1975, acquiring an 18 percent interest. And in 1980, CNR committed more than $40 million to Cast.

Recently, the CNR came to the financial rescue of Cast. Under the terms of that rescue, CNR has an option to assume a 75 percent interest in Cast's container business. CNR also has acquired the Cast container terminal in Montreal.

Inasmuch as the Canadian Government is so heavily financially involved in Cast's operation, couldn't Cast have a rate-making advantage just like State controlled carriers may have?

In other words, the Soviets were cutting rates below their costs in our trades because they needed to earn "hard currency." Couldn't the Canadian Government decide it wanted to develop its ports, and to do so cut shipping rates through Cast in order to attract U.S. cargo?

Answer. Based on the information available to the Department, it appears that the Canadian government's "financial involvement" in Cast is limited and indirect. We do not believe it is at all comparable to the ownership of state-controlled carriers toward which the Controlled Carrier Act of 1978 was directed. We have no reason to anticipate that the Canadian government will cut shipping rates through Cast; to the contrary, as indicated in one of the other questions furnished to us, Cast recently raised its rates, rather than lowered them.

Question. According to information the committee has received, until April 12, 1981. A joint service of Polish ocean lines and Murmansk Steamship Company, called Polarctic Line, had six tariffs on file with the FMC covering the ranges between the United States Great Lakes ports and ports in Northern Europe. On that day, all of those tariffs where cancelled, and Polarctic thus became beyond the reach of the jurisdiction of the Commission in connection with its carriage of United

States Foreign Commerce. Editions of the Montreal newspaper showed Polarctic providing service between Montreal and those same European ranges with at least five vessels.

(A) Under the circumstances, isn't it fair to say that Polarctic evaded coverage of our Controlled Carrier Act which is intended to deal with the predatorily low rates which the communist bloc carriers have charged in the U.S. foreign commerce?

(B) If S. 2414 were law, Polarctic would not have been able to evade coverage of the Controlled Carrier Act, would it?

Answer. If Polarctic chooses not to operate from U.S. ports, they are, of course, not covered by the Controlled Carrier Act. If S. 2414 were enacted into law and Polarctic provided services covered by that statute, they would then apparently also be covered by the Controlled Carrier Act in providing those services.

Question. Some have said S. 2414 impacts on Canadian Commerce because it requires ocean carriers hauling U.S. cargo which moves through Canadian ports to file tariffs with the FMC.

Canada, on the other hand, has a tax law which prohibits its merchants from claiming as a business expense the cost of advertising on U.S. TV stations which serve Canadian viewers.

This, of course, has the effect of reducing revenues for those TV stations.

Doesn't Canadian tax law impact U.S. commerce even more directly than S. 2414 impacts Canadian commerce? After all, under S. 2414, U.S. shippers are not penalized for using Canadian ports.

Answer. The Canadian tax law which prohibits its merchants from claiming as a business expense the cost of advertising on U.S. TV stations which serve Canadian viewers does indeed impact on U.S. commerce. Because of the nature of that Canadian statute, the U.S. has protested about it to the Candian government. Moreover, this Administration has submitted to the Congress proposed "mirror" legislation which would apply the same treatment to U.S. advertising on Canadian stations.

Question. It has been said, if Cast is required to file tariffs with the FMC, they will be harassed before the Commission by U.S. carriers, and subject to administrative delays.

In your view, is this objection justified?

Answer. If S. 2414 is enacted and Cast is therefore required to file tariffs with the FMC, their rates would be subject to legal challenges under the Shipping Act of 1916, as well as to FMC review. These could pose potential delays and uncertainty in rate setting by Cast which it does not now experience.

Question. Canada has claimed a "nearly balanced amount of cross border diversions between it and the U.S."

On the other hand, according to one analysis, U.S. figures show a nearly 2-1 loss in U.S. cargo to Canadian ports as compared to Canadian loss to U.S. ports.

Would you care to comment?

Answer. The movement of containers from the U.S. through Canadian ports increased more than the movement of Canadian containers through U.S. ports from 1977 to 1979; but the reverse was the case in 1980. In total, the balance between the two is now approximately equal.

Question. There have been allegations that Cast has offered "lower-than-cost" on transportation of containers to selective shippers in an effort to get their business.

This, of course, has been denied, and we have no way of knowing because Cast is not required to file tariffs.

On March 1, Cast introduced a $275 surcharge on its container prices because it found itself in serious financial difficulty.

Before Cast imposed that surcharge, Cast's container business was running at about 125,000 Teu's (20-foot equivalent units).

After the surcharge was imposed, that 125,000 figure dropped to 80,000.

Doesn't this suggest that Cast may have been pricing some of its services too low?

Answer. The fact that Cast introduced a surcharge on its container prices may or may not suggest that Cast was previously pricing its container services too low. It should be noted that containers are only a part of Cast's business. It is possible that Cast's container rates were not high enough to yield a satisfactory return. It is also possible that Cast finds it necessary to change the revenue contributions of containers as bulk rates have declined or that Cast is obligated to increase rates because its total volume has declined.

Question. It is pointed out that while the U.S. has a Canadian cargo diversion problem on the east coast, the Canadians have an American cargo diversion problem on the west coast.

Isn't is accurate to say, however, that the reason why the U.S. west coast ports are handling Canadian cargo is because the U.S. ports offer better service; whereas

the reason Montreal is handling U.S. cargo is because of the lower rates Cast is charging?

Answer. The reason U.S. West Coast ports are handling Canadian cargo is that they offer a better combination of price and service from the point of view of those shippers which select the U.S. West Coast ports. Similarly, the U.S. shippers which ship through Montreal presumably do so because it offers them a better combination of price and service.

Question. (A) If S. 2414 were enacted,is it possible that the Canadian Government would respond with a similar requirement, or otherwise retaliate?

(B) If so, as a practical matter, how would such retaliation impact on U.S. ports?

Answer. It is quite possible that if S. 2414 were enacted the Canadian government would indeed respond with a similar requirement, or otherwise retaliate. A similar Canadian requirement could be expected to impact adversely on the West Coast U.S. ports by reducing the current level of Canadian shipments through those ports.

Question. According to the critics of S. 2414, "Where a shipping transaction is entered into in a foreign country and when the goods are taken in charge there by the carrier, U.S. regulation would be an infringement upon the legitimate rights of the other government concerned."

Do you believe the cast-type operation fits the above-described factual situation?

What we are talking about here is a situation where:

(A) The cargo involved originates in or is destined for points in the United States;

(B) It is shipped in containers that are loaded or unloaded in the United States;

(C) For export cargo, the bills of lading and invoices are issued in the United States;

(D) The foreign carriers offering services through Canadian ports maintain offices in the United States, advertise, and solicit business in the United States, and quote rates in the United States, for the shipment of cargo from United States to overseas points; and

(E) The foreign carrier provides overland transportation service in the United States.

How can this type of arrangement be characterized as a "Shipping transaction entered into in a foreign country"?

Answer. The U.S. would not look with favor on any kind of Canadian regulation of Canadian containers shipped through U.S. ports; international comity requires the same U.S. respect for Canadian sovereignty that we would expect from Canada for our sovereignty.

Question. Cast has said that if it is required to file tariffs with the FMC, the conferences will be permitted to use the Commission and its procedures to inhibit and delay Cast's ability to offer responsive rates to shippers and receivers alike. In other words, the conferences can be expected to use their combined resources to force Cast's rate structure into line with their own. The net effect would be that shippers will be deprived of Cast's ability to establish rates that reflect its own costs and will therefore be forced to pay much higher rates than necessary. As such S. 2414 will definitely have an inflationary inpact on international commerce, will adversely affect the balance of payments of the United States. And will increase the costs of imported goods of the ultimate consumers.

Would you please comment on this statement?

Answer. It is a very real possibility that if S. 2414 were enacted the result would be that shippers would be required to pay higher rates than they currently do, with adverse results for the balance of payments and for the costs to consumers.

Question. (A) Would S. 2414 alter any cost advantages which Cast or similar carriers realize by moving cargo overland from points in the United States through Canadian ports to foreign destinations?

(B) Would it alter the rate Cast could charge shippers?

Answer. a. S. 2414 would likely increase the administrative costs of carriers operating from the U.S. through Canadian ports, by adding an additional regulatory regime to their activities.

b. As indicated in responce to an earlier question, it is quite possible that the ultimate effect of enacting S. 2414 would be to cause an increase in the rates which Cast would charge shippers. Moreover, the requirements of S. 2414 would result in the likelihood of delays and risks in establishing rates, by reason of the FMC's authority to disapprove rates.

Question. Cast, I believe, quotes a "per-container" rate to shippers.

(A) Does this allow them to divert high rated cargo, and leave the low rated cargo to other carriers?

In other words, would a "per-container" rate be low enogh to make it financially attractive for shippers to ship commodities which ordinarily would move at a higher

rate; and yet be high enough to deter shippers from moving commodities which ordinarily move at a lower rate?

(B) If so, are there potentially adverse consequences to a trade?

Answer. Since the costs of handling containers differ only marginally based on the value of the commodity shipped, the traditional conference value-based tariffs encourage so-called "cream skimming" by non-conference carriers. The Department does not have data on the effect, if any, of Cast's "per container" rates on the band of traffic which it carriers.

The Department believes that, in general, the rates charged for ocean transportation are best left to the determination of the competitive marketplace.

Question. Recently, this Committee reported legislation (S. 1593) which would eliminate the FMC's authority under section 18(b)(5) to disapprove any rate or charge which it finds so "high or low as to be detrimental to our commerce." If that legislation were enacted, do you still feel S. 2414 would be necessary?

Answer. The Department does not support S. 2414 under any circumstances because, as we testified on May 25, 1982, S. 2414 has the effect of increasing federal regulation of maritime transport activities. The Administration and the Department, to quote our testimony, "believes that the proper course of action is to minimize, not expand, regulatory jurisdiction over the maritime industry."

Question. Is there any reason to believe that Cast is "skimming"; that is, selectively seeking cargo in the U.S. which, for one reason or another, is the most lucrative, and leaving the remainder to move through U.S. ports?

Answer. Since the cost of handling containers differ only marginally based on the value of the commodity shipped, the traditional conference value-based tariffs encourage so-called "cream skimming" by non-conference carriers. The Department does not have data on the effect, if any, of Cast's "per container" rates on the kind of traffic which it carries.

The Department believes that, in general, the rates charged for ocean transportation are best left to the determination of the competitive market place.

Question. This morning the Committee will hear testimony that on the matter of Cargo diversion "there was a slight imbalance in Canada's favor of 1980, according to available public documentation. On East Coast traffic, this added up to 60,899 TEUs (20-foot container equivalent units). However, on the West Coast the surplus was in favor of U.S. ports, totaling 55,523 TEUs. In total, therefore, the overall imbalance was a relatively small 5,372 TEUs in Canada's favor for 1980. For the entire 1976–80 period, overall imbalance is in the U.S. ports' favor by 28,583 TEUs." Would you please comment?

Answer. The figures cited are those contained in Government of Canada Note No. 257, dated June 10, 1981, to the U.S. Department of State in connection with H.R. 3637, and are official Canadian government statistics.

The reason U.S. West Coast ports are handling Canadian cargo is that they offer the best combination of price and service from the point of view of those Canadian shippers which select U.S. West Coast ports. Similarly, the U.S. shippers who ship through Canadian east coast ports presumably do so because they offer them a better combination of price and service than alternatives.

Question. Can you give any specific examples of the cost differential in moving a 40-foot container from an inland point in the U.S. to a European destination via a U.S. port on one hand, and via Cast on the other?

Answer. The Department has not collected any rate data which would permit us to give specific examples of cost differentials for moving a container from the inland U.S. to a European destination via alternate routes over U.S. ports and Canadian ports.

Question. (A) Under the current Cast-type operation, it is perfectly legal, is it not, for a carrier to rate cargo differently for individual U.S. shippers? Is it also legal for a carrier to do so, if the cargo moves from a U.S. port under a tariff filed with the FMC?

(B) In your opinion, is rebating prevalent in a Cast-type operation?

(C) How does the small U.S. shipper fare via-a-vis a large U.S. shipper in a Cast-type operation?

Answer. (A) Under a Cast-type operation, a carrier would have to rate similar cargo equally and charge his published U.S. domestic rates to and from the U.S. border. The FMC would have no jurisdiction over how such a carrier operated to or from a foreign port outside the U.S. In the second instance, it would not be legal, under current FMC rufles and regulations, for a carrier to rate similar cargo differently under a tariff filed with the FMC.

(B) The Department has no information on which to base an opinion about rebating under a Cast-type operation. Tfhe aim of the Administration is to let rates be

market-determined, in which case there would be no incentive to give secret rebates and no need to police published tariffs.

(C) There is no economic reason for a Cast-type operation to discriminate between large and small shippers. Therefore, small shippers can expect competitively priced services.

Senator GORTON. Mr. Benner, you may proceed.

STATEMENT OF C. JONATHAN BENNER, GENERAL COUNSEL, FEDERAL MARITIME COMMISSION

Mr. BENNER. Thank you, Senator Gorton. I appreciate this opportunity to present the views of the Federal Maritime Commission with respect to S. 2414. The bill is identical to legislation reported by the House Merchant Marine and Energy and Commerce Committees. It would extend Shipping Act jurisdiction to ocean common carriers offering U.S. shippers and consignees intermodal transportation service via Canadian or Mexican ports.

The Commission addressed the problem of through intermodal movements which utilize Canadian ports in its decision in Austasia Container Express, which we know as the ACE decision and which was referred to by Ms. Connor in her testimony. By way of brief background, that proceeding concerned a corporation that held itself out to U.S. freight forwarders and shippers as offering a through common carrier service from Detroit to various Australian ports.

Cargo was received by a freight consolidator contracted by ACE in the Detroit commercial zone where it was assembled into carload lots in containers leased by ACE and shipped by truck to Windsor, Ontario. From Windsor, the cargo moved by the Canadian Pacific Railroad to Vancouver. ACE then contracted with various ocean common carriers for the transportation of the containers from Vancouver to ports in Australia via Japan. A single bill of lading was issued for the entire transportation movement.

The Commission found that ACE was a non-vessel-operating common carrier by water in the foreign commerce of the United States and thus subject to regulation under the Shipping Act of 1916. It reasoned that although the 1916 Shipping Act definition of common carrier by water did not by its terms specifically encompass the operations of an ACE type carrier, section 1 of the act should be applied in such a manner as to effectuate the undisputed remedial policies that motivated Congress to enact the Shipping Act.

The FMC was concerned that failure to require tariff filing and adherence by a carrier who solicited and consolidated cargo in the United States for a through intermodal movement which involved a substantial ocean segment would frustrate the act's design to insure nondiscriminatory treatment of shippers and fair competition among carriers in U.S. foreign commerce.

The U.S. Court of Appeals reversed the FMC's decision, concluding that ACE was not a common carrier subject to the Shipping Act because its service did not involve vessels calling at U.S. ports. In so doing, the court further raised the issue of the desirability of a change to the Shipping Act to extend jurisdiction to this type of service in conformity with Shipping Act principles.

The court stated that "in reversing the Commission's decision in this case we are not unmindful of the remedial purposes of the Shipping Act to prevent discrimination in the shipping industry and to promote healthy competition among carriers. Perhaps companies which operate the type of service provided by ACE should be required to file tariffs reflecting the transportation rates they charge. It is not, however, the prerogative of a court or an administrative agency to expand the scope of legislation beyond what was originally intended by Congress."

Congress has now taken the initiative to address the concerns of the Commission and the court. The Commission supports S. 2414 as a means of addressing the problems identified in the ACE decision. However, the Commission takes no position with regard to the perceived problem of cargo diversion through Canadian ports.

The Commission has no firsthand knowledge of accurate statistics on cross-border flows and must defer to others on whether there exists a net imbalance of sufficient magnitude to require governmental intervention in commercial movements. To the extent that such a response is deemed necessary, we must then ask whether S. 2414 or any other legislation on the subject achieves its purposes.

After reviewing testimony offered by various parties in connection with H.R. 3637, I am convinced that there is some confusion as to what effect this type of legislation would have on carriers and the shipping public. Part of this confusion stems from a misunderstanding of the Commission's current role in the regulation of ocean commerce. Accordingly, I would like to spend a few moments this morning describing effects which I believe this legislation would and would not have on carriers using ports of contiguous nations.

S. 2414 will not necessarily prevent cargo from being transported across North American borders before being loaded on oceangoing vessels. The bill does not require U.S. shippers to utilize U.S. ports instead of Canadian or Mexican ports. Shippers will remain free to utilize the carrier of their choice. If a carrier moving cargo through Canadian or Mexican ports offers favorable rates, then it may be assumed that shippers will continue to ship some or all of their cargo via those ports.

This legislation will not necessarily require carriers utilizing Canadian ports to increase their rates. If these carriers have lower costs than carriers utilizing U.S. ports, they may publish lower rates. The right to set rates lies with the carriers. The Commission has no statutory authority to fix the level of rates.

Section 18(b)(5) of the Shipping Act of 1916 allows the FMC to disapprove a rate which it finds, after hearing, to be so low or high as to be detrimental to the commerce of the United States. The Commission has adopted a very liberal standard in 18(b)(5) cases which gives the carriers a maximum degree of rate flexibility and I should note here also that in pending legislation in both the House and Senate, 18(b)(5) has no equivalent provision.

Carriers utilizing Canadian ports would remain free to develop innovative rates in order to better serve the shipping public. They would not be required to abandon the use of per-container rates that are favored by some shippers and which have come under

some attack in connection with at least one carrier operating out of Canada.

Section 18(b) of the Shipping Act does not require the use of commodity rates. Indeed, many carriers subject to regulation under the Shipping Act of 1916 currently publish per-container rates. Volume discounts rates are also permissible under current law. Thus, within broad guidelines, carriers are free to fix the form and level of rates shown in their tariffs.

However, having established a given rate, a carrier must make that rate available to all shippers similarly situated. For example, if a rate is predicated on a given amount of cargo, any shipper tendering that amount of cargo should be entitled to the rate. If carriers operating through contiguous nations are currently offering discriminatory rates to preferred shippers, this bill will clearly expose them to the prohibitions of the Shipping Act.

The tariff provides the shipping public with a ready source of price information and does much to insure that similarly situated shippers are treated equally. The tariff filing provisions of the Shipping Act do not inhibit carriers from making rapid rate reductions in order to meet rates of competing carriers. Rate reductions are effective upon filing with the Federal Maritime Commission.

This legislation avoids any jurisdictional conflict between the Maritime Commission and the Interstate Commerce Commission. Sections 3 (a) and (c) of the bill address concerns expressed by the ICC in their statement of March 25, 1982, in connection with H.R. 3637. These provisions remove any doubt regarding the division of regulatory responsibilities between the FMC and the ICC.

On the other hand, while we are not entirely sure about the exact meaning and scope of section 3(b), that subsection appears to go well beyond what is required to avoid a jurisdictional conflict between our agencies. It would, in essence, prohibit disclosure of any information relating to that leg of the movement between a U.S. point and a port in a contiguous country under any circumstance.

While we see no need for this information on a regular basis, the need could arise in litigation. Section 3(b) would prevent the disclosure of such information in litigation pursuant to subpena before the FMC, the ICC, or the courts. Whether the information sought is relevant in a given case is properly an issue in any suit brought in court to enforce a Commission subpena. Existing evidentiary standards of relevance provide adequate safeguards against misuse of such information. An outright ban on the production of this information seems unjustifiably extreme.

Finally, the legislation does not, nor could it, extend the scope of the Shipping Act to carriers providing transportation which takes place wholly outside the United States. For example, a carrier providing transportation from a port or point in Canada or Mexico to Europe or Asia cannot be subject to U.S. regulations, even if the cargo originated in the United States. A carrier, in order to be subject to regulation, must undertake to transport the cargo within the United States. We note with approval that section 1 of the bill makes this clear.

Thank you for this opportunity to present the Commission's testimony on S. 2414. I will be glad to respond to any questions you may have.

Senator GORTON. Mr. Benner, I would like to make sure that we understand your position with total clarity. It seems to me that what you have said is that the Commission is not sure that there is any problem or that, if there is, it is not sure that it is large enough to warrant legislation. So you do not specifically recommend passage of this bill.

But you do say, on the other hand, that if Congress believes that there is a problem which requires a remedy, this bill is an appropriate solution.

Mr. BENNER. Yes, Senator Gorton. I think that fairly states our position.

Senator GORTON. Well, let's assume there is a problem which deserves of our attention. Do you think it likely that the passage of this bill would decrease the movement of U.S. cargo through Canada?

Mr. BENNER. I really have no basis for judging that. I think a great deal depends on what the rate structures of carriers offering service through Canada are. To the extent that the rates are based on discriminatory acts or are based on preferred treatment of shippers which could not be offered in a movement that was confined to U.S. ports, it might have that effect, but I do not have information that I can offer you on the extent to which carriers operating through Canadian ports are engaged in that type of activity.

Senator GORTON. Let's look at the bill from a different perspective. Would the passage of this bill make carriers serving U.S. ports any more efficient or competitive, or would it make either our ports or our labor more efficient or competitive?

Mr. BENNER. There is nothing in this bill that would change the status quo in any respect with regard to carriers offering service through U.S. ports.

Senator GORTON. Would the bill, if it were passed, add to the enforcement burden of the FMC in any respect? Would it be easy to enforce as far as you are concerned or very difficult?

Mr. BENNER. It would not result in a qualitative change in our enforcement activities. It would result in the filing of some additional tariffs. I do not think that we consider this to be a major impediment to our activities.

Senator GORTON. And you do not think that Canada could make it a major impediment by some kind of attempt to interfere in its enforcement?

Mr. BENNER. I think Canada could frustrate FMC enforcement activities in the same way that any foreign nation can. I think our record is one of mixed success in dealing with those types of frustrations, but I do not view the situation in a Canadian context to be any different than it would be with any of our trading partners.

Senator GORTON. Do you believe that current regulation of this traffic by the Interstate Commerce Commission is insufficient?

Mr. BENNER. Interstate Commerce Commission regulation is confined to activities taking place within the United States. The Interstate Commerce Commission has no authority over that portion of through movements across North American boundaries that involve ocean transportation.

The experience of the Interstate Commerce Commission, I think, is very instructive, though, because there are several cases which

make quite clear that an agency of the United States is perfectly justified in regulating cross-border traffic to the extent that that traffic has an impact on the United States. But clearly the ICC is not under present law regulating traffic that has significant ocean movements.

Senator GORTON. At this point your comments, both written and oral, quite properly deal with the impact this bill would have on the enforcement of the present Shipping Act. If S. 1593 were enacted and carriers were given the clear authority to discount rates on the basis of time and volume commitments and to enter into service contracts, would that change the actual benefits procured by the passage of this bill?

Mr. BENNER. I am not sure that it would have a major effect. As I indicated earlier, the major impact of the passage of S. 1593 and the House equivalent would be that 18(b)(5) would not longer have any counterpart in existing law. The Commission has always been of the opinion that the service contract and time-volume contract provisions of pending legislation have some counterpart in existing law.

We have always felt that those types of services can be offered to some extent and that the effect of the proposed legislation is to clarify and to pinpoint the conditions under which those kinds of services can be offered. So I think my answer would have to be we do not feel that the passage of pending legislation would radically affect how we would operate under this kind of legislation.

Senator GORTON. Thank you. Senator Inouye.

Senator INOUYE. The Canadian company—Cast—states that S. 2414 is "in direct conflict with the spirit of deregulation manifested by the recent passage of the Staggers Act." Recently this Committee reported S. 1593, which deregulates ocean shipping, yet this bill, S. 1593, still requires tariffs to be filed and clarifies that the FMC does have some jurisdiction over intermodal shipping. Would it be accurate to say that nothing in S. 2414 contradicts what the committee did in S. 1593?

Mr. BENNER. I think that is very clear to us, and I think the discussion that has gone on here this morning focused quite well some of the issues in S. 1593 with regard to tariff filing. With tariff filing retained in S. 1593, there is absolutely nothing inconsistent on that score between S. 2414 and S.1593. In fact, I think the two are quite compatible in their treatment of tariffs.

Senator INOUYE. It has been said that if Cast is requires to file tariffs with the FMC they will be harrassed before the Commission by U.S. carriers and be subjected to administrative delays. Is this objection justified?

Mr. BENNER. I certainly hope not. I obviously cannot offer the members of this committee any assurances as to what other carriers will do. Certainly the filing of tariffs by Cast may result in some actions taken against them in an administrative forum. I fully expect that these will not be frivolous actions and will not be mere harrassing techniques used by American carriers or foreign flag carriers using U.S. ports.

Senator INOUYE. Have you looked over Cast's rates?

Mr. BENNER. I am familiar in general outline with some of the criticisms that have been leveled against Cast rates.

Senator INOUYE. In your judgment, is it likely that under existing FMC criteria Cast's rates could be successfully challenged as being unlawfully low?

Mr. BENNER. I am very reluctant to speculate on that, Senator. If that kind of issue were to arise before our agency it would be in a judicial context, and for me to offer any opinion on that at this point would I think justifiably bring into question whether the Commission had studied the issue in the proper forum. If the issue is raised, the Commission would have to give it a fair hearing and would have to analyze it under existing criteria.

As I point out in my testimony, the 18(b)(5) type analysis that the Commission sometimes uses when rates are alleged to be too low, under current case law requires complainants to show that the rate will not cover out-of-pocket costs for the carrier. That is a fairly liberal standard. It is most uncommon to find rates that would not cover out-of-pocket costs.

Senator INOUYE. In its statement, the National Industrial Traffic League cites several reasons why it is more advantageous for a U.S. shipper to route through Canadian ports, such as better intermodal service, more competitive single factor rates, the use of 20-foot containers, quicker transit times, lower labor costs for freight handling, and protection against service interruptions.

Would the enactment of this bill, S. 2414, take away any of these advantages?

Mr. BENNER. No, It would not, and I do not think the Commission could offer even the qualified support that it has offered if we felt that the bill would take away those advantages.

Senator INOUYE. Cast has said in its prepared testimony that if it is required to file tariffs with the FMC the conferences will be permitted to use the Commission and its procedures to inhibit and delay Cast's ability to offer responsive rates to shippers and receivers alike. In other words, the conferences can be expected to use their combined resources to force Cast's rate structure into line with their own.

The net effect would be that shippers would be deprived of Cast's ability to establish rates to reflect its own costs and will therefore be forced to pay much higher rates than necessary. As such, S. 2414 will definitely have an inflationary impact on international commerce, will adversely affect the balance of payments of the United States, and will increase the cost of imported goods of the ultimate consumers.

Can you comment on this?

Mr. BENNER. I certainly do not think that the tariff filing requirement is the source of the kinds of problems that are forecast by Cast in that statement. It seems to me that if we do have a situation presently where there are rates being offered to shippers in the United State foreign commerce which are discriminatory, then the tariff filing requirement may cause some of those rates to rise. We have no evidence at this time that these rates are indeed discriminatory.

I really do not believe that the mere filing of tariffs can have that kind of effect on rates and that is perfectly consistent with the Commission's position on the issue of tariff filing generally which

has been given some ventilation in the hearings on S. 1593. The mere filing of prices will not have that type of effect on rates.

Senator INOUYE. According to information the committee has received, until April 12, 1981, a joint service of Polish Ocean Lines and Murmansk Steamship Co., called Polarctic Line, had six tariffs on file with the FMC covering the ranges between the U.S. Great Lakes ports and ports in northern Europe.

On that day all of those tariffs were canceled and Polarctic thus became beyond the reach of the jurisdiction of the Commission in connection with its carriage of U.S. foreign commerce. Editions of the Montreal newspapers showed Polarctic providing service between Montreal and those same European ranges with at least five vessels.

Under the circumstances, isn't it fair to say that Polarctic evaded coverage of our Control Carrier Act which is intended to deal with the predatorily low rates which the Communist bloc carriers have charged in the U.S. foreign commerce?

Mr. BENNER. The answer to that depends on whether Polarctic continues to carry U.S. cargoes. The cancellation of Polarctic's tariffs reflects an assumption that they are not presently engaged in the lifting of U.S. commerce at U.S. ports. If they are continuing to carry U.S. commerce via Canadian ports, then it would be our interpretation of those facts that they are continuing to engage in U.S. commerce and may to some extent be operating in U.S. commerce without any check on their rates.

The tariff that is not filed and which would be under this legislation is a means by which the Commission could monitor rates of such a joint service.

Senator INOUYE. We have received word, not verified, that it is business as usual. The same type of cargo is being shipped. But we have no verification of that.

Now if this bill, S. 2414, were law, would Polarctic have been able to evade coverage of the Control Carrier Act?

Mr. BENNER. Well, to the extent that Polarctic is offering through transportation services to U.S. shippers via Canadian ports, if this bill were law we would be able to monitor their activities.

Senator INOUYE. According to information this committee has received, the Canadian National Railway, which is a government-owned corporation, invested $12 million in Cast in 1975, acquiring an 18-percent interest, and in 1980 the Canadian Railroad committed more than $40 million to Cast. Recently the CNR came to the financial rescue of Cast. Under the terms of that rescue, CNR has an option to acquire a 75-percent interest in Cast container business. CNR also has acquired the Cast container terminal in Montreal.

Would you interpret this to mean that the Canadian Government is heavily financially involved in the operation of Cast?

Mr. BENNER. I really have insufficient knowledge about the manner in which the Canadian Government funds the Canadian National Railroad and what the relationships are between CNR and Cast operation to offer any informed opinion on that. I think that is a matter on which I really should plead ignorance in the interest of an accurate record.

Senator INOUYE. Well, assuming the following to be true, that the Government of Canada, owns CNR, and assuming that the reports are correct that CNR did purchase 18 percent of Cast, and assuming also that they have an agreement which provides for an option to assume a 75-percent interest in the container business, and also that CNR has acquired the Cast container terminal in Montreal and that in 1980 CNR committed more than $40 million to Cast, would it indicate that the Government of Canada has some interest in Cast?

Mr. BENNER. Yes, those assumptions, when accepted, clearly indicate that.

Senator INOUYE. Mr. Chairman, at this juncture I would like to put an article in the record which appeared in the April 26, 1982, issue of the Journal of Commerce entitled "Cast Gets All Canada Rescue Plan."

Senator GORTON. Without objection, it will be part of the record.

[The article follows:]

[From the Journal of Commerce, Apr. 26, 1982]

CAST GETS "ALL-CANADA" RESCUE PLAN—CN HOLDS 1985 OPTION FOR 75 PERCENT SHARE OF CONTAINER BUSINESS

(By Leo Ryan)

MONTREAL.—Canadian National Railways holds an option to acquire a 75 percent ownership of the Cast container business three years from now in the spectacular climax to negotiations for keeping the major North Atlantic shipping group out of financial bankruptcy.

While Frank Narby, chairman of Eurocanadian Shipbuilders Ltd. of Switzerland, presently retains effective control of Cast Containers Ltd., he may have to relinquish this control in three years time if Canada's largest railway company chooses to exercise its option in 1985.

In the meantime, CN has acquired, at a cost of $10 million, the assets of the Cast container terminal, Task Terminal Ltd., in Montreal, and the facilities will be leased back to Cast.

Though no details were announced publicly on Friday on how CN could gain control of the Cast container business, informed sources revealed the cooperation could involve no actual cash outlay. Instead, the likely scenario would see CN pull out its existing interest of 18 percent in Eurocanadian Shipholdings, valued at over $61 million, and plowed this investment directly into Cast Container Ltd., the container arm of Mr. Narby's empire, Mr. Narby would then retain control of his substantial bulk shipping operations.

Under a nearly $200 million rescue package. Cast also is disposing of three of its six new building container/bulk carriers, or Conbulkers, which will be leased back to Cast by the Bank of Montreal and the Royal Bank of Canada, the two main creditors who have played a central role in engineering what was described as "an all-Canadian solution."

At a press conference, Klaus Glusing, chairman of Cast North America Ltd., went out of his way to praise in particular Rowland Frazee, the chairman and chief executive officer of The Royal Bank of Canada.

The disposal side of the rescue package totals about US $150 million. At the same time, Eurocanadian is gaining access to new loans and moratoria over the next two years from the two Canadian banks for an injection of approximately $40 million to meet current cash requirements.

Under the scheme originally envisaged in mid-February, Mr. Narby had proposed to sell half of the group's container business for about $100 million as well as 100 percent of Cast Motor Vessels Ltd., owner of three new building bulk carriers ordered from the Kyundai yard in Korea, and costing $180 million.

Meeting payments for the Korean-built vessels due for delivery this year and in 1983 together with depressed bulk shipping rates and the prolonged downturn in the world economy had precipitated Cast's crisis.

Against widely-held expectations, Cast is holding up to its commitments for all three Korean-built, 150,000 deadweight ton vessels.

Earlier this month, Cast transferred ownership of several of its large combination bulk carriers to the Chemical Bank of New York to help eliminate a debt of about $38 million.

"The Chemical Bank actually cleared the decks for the Canadian solution," commented Mr. Glusing, who then wasted no time in throwing down the gauntlet to the competition.

Asked if Cast would, as part of its counter-offensive, remove or reduce the $275 surcharge it introduced on March 1, Mr. Glusing hinted that there would be some adjustments to its container prices to bring them closer to those charged by conference carriers.

"We will price ourselves in such a manner to recapture the market lost in recent months."

Before the surcharge was imposed, Mr. Glusing said that Cast container business was running at about 125,000 20-foot equivalent units (on an annualized basis). It had recently dropped, he revealed, to some 80,000 TEUs by the same measurement stick.

Mr. Glusing was confident that Cast could in a relatively short time, recapture enough container traffic to reach 110,000 TEUs on an annualized basis. He said that in the fiscal year ended March 31, Cast container traffic totaled about 110,000 TEUs compared to 90,000 TEUs during the previous fiscal year.

In an early reaction to the Cast rescue package, George Kelly, general manager-North America, CP Ships, declared: "Mr. Narby has been a formidable competitor in the past, and we can count on him in the future. Better the devil you know than the one you don't know."

The feature that took members of the Montreal shipping community most by surprise was the manner in which CN, without making a massive financial outlay, had put itself in a position to eventually take control—of the container business—again without having to come up with fresh cash. In effect, a master stroke.

Observers noted that the rescue package accelerates the involvement of Canada's two national railways in international shipping.

Senator INOUYE. If this bill were to be enacted, it has been suggested that there is a possibility that the Canadian Government would respond with a similar requirement or would somehow retaliate. If so, as a practical matter how would such retaliation impact on our ports?

Mr. BENNER. I share Ms. Connor's difficulty in speculating as to what form Canadian retaliation would take. We might assume for purposes of discussion that it would take a mirror image form. If the Canadians were to require carriers offering through intermodal transportation from Canada to foreign points via U.S. ports to file tariffs with the Canadian authorities, I question whether that would cause serious concern in this country.

I think probably it is a useful exercise to reverse the proposal and decide whether that would cause us to be concerned. I do not think that that would be the cause of serious concern, and for that reason I do not think that there is a serious problem with our imposing this requirement going in the opposite direction.

On this point—and it is a bit of a digression—I would want to correct a statement by the Department of Transportation. It is our understanding that the Canadian Government does require tariffs to be filed in certain circumstances and those circumstances primarily relate to conference activity out of Canada.

Senator INOUYE. Mr. Chairman, I apologize for all these questions. I have one more. Under the current Cast-type operation, is it not perfectly legal for a carrier to rate cargo differently for individual U.S. shippers?

Mr. BENNER. Well, I think it would be our contention that it is not legal, but it is impossible to enforce the prohibition against such activity without the existence of tariff information on file.

Senator INOUYE. In other words, you would say that rebating is possible if not prevalent in this type of operation?

Mr. BENNER. It would be much easier to engage in illegal rebating in this environment. I may be overly optimistic about the effect of the ACE case when I say that we would consider that illegal. It may well be that the holding of the ACE case would bar the Commission from even asserting illegal conduct in that context, but I think the Commission has an obligation to Congress to pursue that since that issue was not directly reached in the ACE situation.

Senator INOUYE. Mr. Chairman, I wish to commend Mr. Benner. I think he has been most helpful.

Senator GORTON. He certainly has.

Senator INOUYE. I think he is one of the most knowledgeable counsels we have had before this committee. I thank you very much.

Mr. BENNER. Thank you very much, Senator.

Senator GORTON. We both do so. Thank you very much for coming. There may be additional questions submitted to you.

Mr. BENNER. We will be happy to answer them.

[The following information was subsequently received for the record:]

FEDERAL MARITIME COMMISSION,
Washington, D.C., June 7, 1982.

Hon. DANIEL K. INOUYE,
Senate Merchant Marine Subcommittee,
Washington, D.C.

DEAR SENATOR INOUYE: Please find enclosed my response to the written questions submitted to me after my appearance before the Subcommittee on May 25, 1982 to testify on S. 2414.

I trust that my statements are responsive to your inquiries. This should complete the record for my appearance. Should you have any further questions or if I may be of assistance in any other matter, please do not hesitate to contact me.

Sincerely,

C. JONATHAN BENNER, *General Counsel.*

Enclosure.

Question. Under the current Cast-type operation, it is perfectly legal, is it not, for a carrier to rate cargo differently for individual U.S. shippers? Is it also legal for a carrier to do so, if the cargo moves from a U.S. port under a tariff filed with the FMC?

Answer. Under section 18(b)(3) of the Shipping Act, 1916, a common carrier may only charge those rates which are specified in its tariff on file with the Commission. That section makes it unlawful to give any rebate that is not in accordance with the carrier's tariff. Section 17 of the Act prohibits any carrier from charging a rate which unjustly discriminates among shippers or ports. It is therefore illegal for any carrier operating from a U.S. port under a tariff on file with the Commission to unjustly discriminate among U.S. shippers or to offer secret, illegal rebates. As I stated earlier, although the *ACE* decision did not reach the issue, it would be the Commission's view that it is not legal for a Cast-type operator to discriminate amongst U.S. shippers. However, it would be impossible to enforce the prohibition against such conduct without the existence of tariff information on file. It may be that the Commission would be barred by the *ACE* decision from asserting illegal conduct in the case described, but until that determination is made, the Commission would have an obligation to pursue such a matter within the bounds of Shipping Act directives.

Question. In your opinion, is rebating prevalent in a Cast-type operation?

Answer. I have no information on which to base an opinion whether illegal rebating is prevalent among carriers offering intermodal service to U.S. shippers through Canadian ports.

Question. How does the small U.S. shipper fare vis-a-vis a large U.S. shipper in a Cast-type operation.

Answer. Again, we have no factual basis on which to make a determination as to the treatment of small shippers vis-a-vis large shippers in a Cast-type operation. Given the fact that these carriers may be discriminating among shippers in setting their rates for service, the larger shippers may be receiving more favorable treatment due to their stronger market influence.

Question. This morning the Committee will hear that one of the reasons why it is more attractive for shippers to use Canadian ports is that the Canadian Government allows carriers and shippers to enter into service contracts so that service packages can be designed to meet a particular shipper's market needs.

Would you comment on this? Particularly the effect S. 2414 would have; and whether small shippers would find service contracts that attractive?

Answer. There is nothing in the Shipping Act, 1916 that prohibits a carrier and a shipper from entering into a so-called service contract. While such contracts have not been common in the U.S. foreign commerce, they nevertheless have been utilized in some instances. Matson Navigation Company had a service contract applicable to the transporation of sugar from Hawaii to the U.S. West Coast. The Shipping Act does require that the contract be published in the carrier's tariff on file at the Commission and that a carrier offering such a contract to one shipper must also make such contract arrangements available to other similarly situated shippers on a nondiscriminatory basis.

Therefore, to the extent that opponents of S. 2414 base their opposition on the argument that service contracts are available to carriers and shippers by virtue of their operation through Canadian ports and that such contracts are not lawful for transportation through U.S. ports, the argument is incorrect. With regard to the second part of the question, S. 2414 would have no effect on the status of service contracts under the Shipping Act, 1916.

Service contracts may hold some attractiveness for smaller shippers who have certain special equipment requirements for the transporation of their cargo, e.g. refrigerated containers, or they may require assurance of a definite time schedule for the pick up and delivery of their property. The advantage of a service contract is that its terms may be adaptable to the individual needs of a particular shipper. A carrier, however, must be circumspect in meeting the tariff requirements and nondiscrimination directives of the Shipping Act when offering such contracts.

Question. There have been allegations that Cast has offered "lower-than-cost" on transporation of containers to selective shippers in an effort to get their business.

This, of course, has been denied, and we have no way of knowing because Cast is not required to file tariffs.

On March 1, Cast introduced a $275 surcharge on its container prices because it found itself in serious financial difficulty.

Before Cast imposed that surcharge, Cast's container business was running at about 125,000 TEU's (20-foot equivalent units).

After the surcharge was imposed, that 125,000 figure dropped to 80,000.

Doesn't this suggest that Cast may have been pricing some of its services too low?

Answer. A carrier's financial health is based on the interrelation of a number of factors and it is difficult to isolate one cause for a carrier's financial troubles. Setting rates lower than costs could certainly lead, over time, to financial difficulty. The Commission, however, is not in a position to judge whether that is in fact the source of Cast's alleged problems.

Question. In your statement, you quote the dicta of the Court of Appeals in the *ACE* case. Is it accurate to say that the Court was pointing to an "infirmity" in the Shipping Act?

Answer. The Court stated that neither it nor an administrative agency could extend Shipping Act jurisdiction over the ACE-type service, but at the same time, it acknowledged that Congress, nevertheless, could act to include such carriers under the jurisdiction of the Shipping Act. Use of the word "infirmity" to characterize the Court's opinion concerning the "gap" in Shipping Act jurisdiction would be inaccurate because it implies a value judgment by the Court on that issue. The Court stated that it was the prerogative of Congress, not the Court, to determine the policy issue.

Question. Cast, I believe, quotes a "per-container" rate to shippers.

(A) Does this allow them to divert high rated cargo, and leave the low rated cargo to other carriers?

In other words, would a "per-container" rate be low enough to make it financially attractive for shippers to ship commodities which ordinarily would move at a higher rate; and yet be high enough to deter shippers from moving commodities which ordinarily move at a lower rate?

(B) If so, are there potentially adverse consequences to a trade?

Answer. Per container rates are not *per se* unlawful under the Shipping Act, 1916. While there exists a potential for the situation that you describe, i.e. that high value cargo would move under a per container rate system and low value cargo would be shut out, there has been no actual evidence that this has occurred. That issue was considered in *Agreement No. 9955,* 18 F.M.C. 433, I.D. adopted by FMC at 18 F.M.C. 426 (1975), where the per container rates offered by Star Shipping Company were challenged. The protestants, however, were unable to prove that the rates resulted in adverse consequences for the lower value cargo.

Question. (A) Would S. 2414 alter any cost advantages which Cast or similar carriers realize by moving cargo overland from points in the United States through Canadian ports to foreign destinations?

As I stated during my testimony, the bill would not alter any cost or service advantages that Cast-type carriers may enjoy by offering through intermodal service to U.S. shippers through Canadian ports. The Commission could not offer the qualified support for the bill that it has, if we believed that the bill would take away any advantages that do exist.

(B) Would it alter the rate Cast could charge shippers?

Answer. The bill does not provide any additional rate authority to the Commission over ocean carriers operating in the U.S. foreign commerce. The rates offered by Cast would be subject to the same requirements as those offered by other ocean common carriers operating from U.S. ports. To the extent that Cast's rates fail to meet those requirements, *e.g.,* if they are discriminatory vis-a-vis certain shippers, Cast would be required to alter them.

Question. According to the critics of S. 2414, "where a shipping transaction is entered into in a foreign country and when the goods are taken in charge there by the carrier, U.S. regulation would be an infringment upon the legitimate rights of the other government concerned."

Do you believe the Cast-type operation fits the above-described factual situation?

(A) What we are talking about here is a situation where:

(A) The cargo involved originated in or is destined for points in the United States;

(B) It is shipped in containers that are loaded or unloaded in the United States;

(C) For export cargo, the bills of lading and invoices are issued in the United States;

(D) The foreign carriers offering services through Canadian ports maintain offices in the United States advertise, and solicit business in the United States, and quote rates in the United States for the shipment of cargo from United States to overseas points; and

(E) The foreign carrier provides overland transportation service in the United States.

How can this type of arrangement be characterized as a "shipping transaction entered into in a foreign country?"

Answer. The Commission agrees that the United States had no interest in the transportation of commerce between the foreign point or ports. Neither the Shipping Act in its Present form nor S. 2414 as introduced extend jurisdiction to those movements. The United States does, however, have a legitimate concern in regulating the ocean transportation of U.S. commerce. The Cast-type operation which you describe is not a strictly foreign-to-foreign movement, rather it involves the transportation of the property of U.S. shipper/consignees between points in the United States and points overseas. It is, in our view, transportation of U.S. commerce. It is then the prerogative of the Congress to determine whether this movement should be subject to the same regulation as carriers offering service through U.S. ports.

Question. Cast has said that currently the ICC exercises jurisdiction over that portion of Cast's operations which is conducted within the United States.

Is this really relevant to ensuring that the objectives of the Shipping Act are achieved, i.e., "nondiscriminatory treatment of shippers and fair competition among carriers in the U.S. foreign commerce"?

I ask this because the ICC's jurisdiction is limited to the *shortest* part of Cast's operation—i.e. that portion of the haul within the U.S. The remainder—the railroad haul via the Canadian National railroad, and the transoceanic portion—are unregulated.

Answer. S. 2414 would bring within the purview of the Shipping Act ocean carriers which offer a through intermodal ocean transportation service through a Canadian or Mexican port between an inland point in the United States and a foreign destination. The focus of the regulation is, as with such transportation movements through U.S. ports, upon the through intermodal rate and service, not upon the individual transportation modes that comprise the whole service. Regulation by the ICC of the inland portion of an ocean intermodal service is not a meaningful exer-

cise in terms of the nature of the whole transportation service. Information regarding the rates and service on the inland portion of the Cast operation would present only a partial picture of the actual ocean transportation service offered by Cast to U.S. shippers. Regulation by the ICC of the inland portion of Cast's intermodal ocean service be sufficient, therefore, to meet the objectives of the shipping Act to ensure a competitive and nondiscriminatory ocean transportation system for U.S. importers and exporters.

Senator GORTON. We will now hear from a panel consisting of John Brady, the Chairman of the traffic board of the North Atlantic Ports Association and four members of that association.

Mr. Brady, do I understand that there is just the one statement for the four of you but all are here to answer questions?

Mr. BRADY. Yes, Mr. Chairman. I will make the original statement and if they have supplemental comments or statements they will make it for their own ports.

Senator GORTON. Fine. Please proceed.

STATEMENT OF JOHN M. BRADY, CHAIRMAN, TRAFFIC BOARD OF THE NORTH ATLANTIC PORTS ASSOCIATION, ACCOMPANIED BY RINO MORICONI, MASSACHUSETTS PORT AUTHORITY; GEORGE MOHR, DELAWARE RIVER PORT AUTHORITY; DAVID ZIOLKOWSKI, MARYLAND PORT ADMINISTRATION

Mr. BRADY. Good morning, Mr. Chairman. My name is John Brady, and I am the manager of the transportation management division for the Port Authority of New York and New Jersey. I am also the chairman of the traffic board of the North Atlantic Ports Association.

I am accompanied this morning by several representatives of the traffic board—Mr. Rino Moriconi for the Massachusetts Port Authority, Mr. George Mohr from the Delaware River Port Authority, and Mr. David Ziolkowski for the Maryland Administration. Each are very conversant with the bill you are holding hearings on today.

In the interest of brevity, the traffic board would like to submit this statement for the record and in the absence of Mr. Stanley Payne I have also asked that you accept his statement also for the record.

Senator GORTON. We will include each of those statements in the record in full.

Mr. BRADY. Thank you, Mr. Chairman.

I would like to summarize the traffic board's statement. The traffic board is pleased to have the opportunity to testify on S. 2414 before this subcommittee since we firmly believe that the issue it addresses—the filing of tariffs by all parties engaged in waterborne commerce of the United States—is one of the most crucial issues facing the port industry today.

The issue that the bill touches upon, as does its identical companion, H.R. 3637 in the House of Representatives, is one that has received much publicity and has suffered from a great deal of misunderstanding. We hope to highlight for the subcommittee the current problems presented by unfiled tariffs causing cargo diversion away from U.S. railroads, motor carriers, ports and waterfront workers.

Indeed, this subcommittee or the entire Senate is no stranger to this issue, since Senator Inouye covered this question of tariff filings for those moving U.S. cargoes through ports adjacent to the U.S. in S. 2585, his Omnibus Maritime Regulatory Reform Bill of 1980, which unanimously passed the Senate in 1980. We know of Senator Inouye's great concern over this issue and his recognition of this problem as one of national scope and commend him for his leadership in this Congress.

The traffic board began to monitor in the late 1970's a new cargo trend of container movements to and from Europe. Instead of taking the traditional inland patterns of movements—let's say from the Midwest to Europe via the Great Lakes or the Atlantic Coast—they were moving northward through Montreal, St. John, or Halifax, Canada.

At first, we viewed this cargo diversion as merely another opportunity for shippers to move cargoes and looked forward to compete vigorously with the Canadian ports. The same competition flourished on the west coast through Vancouver, British Columbia, and a case was brought to the Federal Maritime Commission—the ACE case which has been described by the prior witnesses in their testimony—for that body to address the question of jurisdiction.

In a long and learned decision where the District Court of Appeals rejected the attempt of the Federal Maritime Commission to regulate all U.S. waterborne commerce, the bottom line was that although it appeared natural for the Congress to want to regulate this waterborne cargo as it does others through the various shipping acts, the movement across the border presented a loophole of sorts that only Congress could cure.

Attempts were made in Congress by Senator Donald Reigle of Michigan and Congressman John Murphy of New York, who introduced legislation in the 95th and 96th Congress to close this loophole. The steamship lines that take advantage of this loophole in our laws, particularly Cast Container Lines, proclaim that the proposed legislation in S. 2414 and H.R. 3637 will violate Canadian-American friendship, destroy free enterprise, increase rates, and harm U.S. shippers utilizing their services.

Should Congress merely apply regulations to the same U.S. cargo from the same U.S. origins to the Ports of Los Angeles, Portland, Seattle, New York, Baltimore, or New Orleans and not to the Port of Montreal? Commonsense and legal inquiry into the movement of this cargo to Montreal reveals that the cargo is still the waterborne commerce of our country, a fact not determined by the port of entry or exit.

The problem continues to grow. The Maritime Administration has monitored the growing volume of this cargo diversion. We have attached tables from the Maritime Administration's report of March 1982 on export-import cargoes transshipped via Canada to our statement. But to give the Senate some small idea of how it has mushroomed in just 8 years, which we just heard in Senator Inouye's statement in 1974, 1.2 million tons of U.S. cargo worth $1.3 billion moved via Canadian ports. In 1980, the tonnage figure of nearly 2.2 million tons moved via Canadian ports, worth $5 billion.

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At first, Cast stressed that it was their "blue box system" which enabled them to move cargo hundreds of dollars cheaper than the U.S. competitors, yet as the attached clippings now reveal—attached to our statement—Cast had formed an alliance with the Canadian National, the nationalized railway of eastern Canada. It was an indirect government subsidy through stock purchases that subsidized the low cost shipments.

Many have said that this bill is regional in scope and we argue that it is not. The Port of New Orleans, Seattle, the Gulf Ports Association support H.R. 3637. Congressmen from the Great Lakes do, as well as ILWU, the chief waterfront union on the west coast, as well as the ILA, the east coast union.

Another myth surrounding H.R. 3637 and, by its implications, S. 2414, is that it is antishipper. We have never argued with the right of a shipper to use Canadian ports. What we do take issue with—and U.S. shippers should also—is that a foreign-based entity violating daily one of the basic tenets of our shipping law, namely that similarly situated shippers must be served and charged the same rates.

Cast does not do this and their recent financial troubles reveal that they serve only the large and the high-valued cargo shippers and leave the medium and small shippers by the wayside in their urge to skim the cream of the container crop from the U.S. marketplace.

Shippers somehow have bought the unsubstantiated argument of Cast that the passage of this bill will increase their costs because of the carrier's obligation to publish and file their tariffs with the Federal Maritime Commission. This additional cost, so they say, will drive them from the U.S. marketplace.

Experts have estimated that the cost of filing a tariff to Cast at less than $5,000. This minor cost could scarcely drive a semisubsidizied carrier out of the lucrative U.S. marketplace. If Cast wants to compete on equal terms, justice requires that Congress give them the right to do so and enable U.S. interests to have the ability to verify their rates and attempt to meet them headon.

Much will be made of the fact that the administration opposes this bill. Let us analyze who supports what. The Federal Maritime Commission and the Office of Special Trade Representatives are two important agencies. The Federal Maritime Commission supported this bill in H.R. 3637. Their views have changed a little bit, but they still do not oppose it. The Office of Special Trade Representatives does not oppose it.

The State Department, Justice, and Commerce Departments, in opposing the bill, take a predictable don't upset the Canadians approach. Finally, the Department of Transportation abstained from taking a position although they admit that our regulatory system for these cargoes should be uniform. If we do not file tariffs and merely publish them, Cast should also or, in the alternative, if we are required to file tariffs, Cast should also be required to file their tariffs.

The regulatory bill this subcommittee reported on in S. 1593 rightfully required tariff filings for the U.S. waterborne commerce. The Traffic Board supports this provision along with shippers' organizations and other carriers serving U.S. ports.

In conclusion, Mr. Chairman, we would urge this subcommittee to report S. 2414 in its present form and for the sake of fairness and uniformity insure that when S. 1593 becomes law, so will S. 2414. All U.S. port ranges, shippers, railroads, motor carriers and waterfront workers will be given an equal chance to compete for our own U.S. cargoes and not suffer any further harm due to loopholes in our law.

Thank you, Mr. Chairman.

[The attachments referred to follow:]

U.S. Exports and Imports Transshipped via Canadian Ports

INTRODUCTION

This report presents the dollar value and estimated tonnage for United States exports and imports transshipped through Canada for the year 1980. In March 1981, the Maritime Administration published a similar report which covered exports and imports for the years 1976 through 1979.

United States' waterborne trade in 1979 totalled 823.1 million long tons of which 57.0 million tons were liner cargo and 2.1 million tons were transshipped through Canada. Similarly, 61.2 [1] million tons of total liner carriage of U.S. imports and exports can be compared to the 2.2 million long tons transshipped in 1980.

This report for calendar year 1980 shows shipments arranged numerically by four-digit Schedules A and E commodity code under each selected U.S. Customs District by foreign country of destination for exports and by foreign country of origin for imports. These detailed statistics for significant U.S. Customs District are presented in separate appendices, E for Exports and I for Imports.

SUMMARY

Exports

Table 1-E compares the dollar values and estimated tons for the years 1974 through 1980 via Canada through U.S. gateways. U.S. exports transshipped through Canadian ports in 1980 were valued at $2,099 million, up $788 million from 1979, a 60 percent increase, with estimated long tons increasing from 886,450 to 1,179,292 longs tons, a 33 percent increase, which indicates a growth in the amount of cargo diverted through Canadian ports as well as a shift to higher valued commodities.

Twenty nine percent of the $788 million increase in exports is due to shipments to the U.S.S.R. through Canada caused by the East and Gulf coast longshoremen's embargo on cargoes destined for Russia. The value of these U.S. exports to the U.S.S.R. increased from $486 thousand in 1979 to $232 million in 1980.

TABLE 1-E.—ANNUAL COMPARISONS OF EXPORTS TRANSSHIPPED THROUGH CANADA

Year	Dollar value (thousands)	Percent change	Estimated long tons	Percent change
1974	459,942	.....	579,037	.....
1975	434,854	−6	477,436	−18
1976	496,715	14	587,987	23
1977	987,255	99	842,981	43
1978	978,842	−1	867,469	3
1979	1,311,553	34	886,450	2
1980	2,099,115	60	1,179,292	33

Imports

Table 1-I reveals a substantial increase in U.S. imports via Canadian ports from 1976 to 1977, similar to that observed for exports. Both estimated tons and dollar value continued to increase between 1977 and 1979; however, the dollar increments

[1] Primary figure.

were proportionally more significant. In 1980, dollar value increased by four percent, but tonnage decreased by 20 percent. This was largely due to a sharp decline in a few high volume, low value commoditities such as nonferrous ores and other crude minerals. The largest tonnage groups were iron and steel manufacturers, which accounted for 15 percent of the long tons, and showed a fairly strong growth from 115,989 long tons to 146,237 long tons, a 26 percent increase. The largest single commodity group, vehicle and equipment parts, accounting for 11 percent of the tonnage, experienced a 26 percent decline from 147,999 long tons in 1979 to 109,873 long tons in 1980.

TABLE 1–I.—ANNUAL COMPARISONS OF IMPORTS TRANSSHIPPED THROUGH CANADA

Year	Dollar value (thousands)	Percent change	Estimated long tons	Percent change
1976	$757,855	.....	815,745	.....
1977	1,083,698	43	1,022,729	25
1978	1,696,173	57	1,140,936	12
1979	2,088,288	23	1,225,773	8
1980	2,180,220	4	981,849	−20

TRANSSHIPMENTS BY DISTRICT

Exports

In Table 2–E, comparisons are made between 1979 and 1980 for the top seven U.S. Customs Districts and the other export transhipment gateways combined.

Detroit continues to be the largest transshipment district with more than half of the total dollar value and 55.4 percent of the volume increase over 1979. Next in magnitude, but less than 25 percent of Detroit's value, is Ogdensburg, which has moved from $46 million in 1976 to $308 million in 1980.

Buffalo has increased by more than three times its 1976 value of $37 million, and St. Albans has increased by almost ten times its $11 million value for 1976.

The estimated long tons for export shipments listed in table 2–E show more modest increases than those for dollar value between 1979 and 1980. The largest single increase is 84 percent, transshipments through Portland (Maine) rising from 35,659 tons in 1979 to 65,621 in 1980.

TABLE 2–E.—DOLLAR VALUE—EXPORT COMPARISONS OF CALENDAR YEARS 1979 AND 1980 FOR U.S. CUSTOMS DISTRICTS WITH 1980 TRANSSHIPMENTS VALUED AT $10, OR MORE

[Dollars in thousands]

Customs district	1979	1980	Dollar change	Percent change
Detroit, Mich	$845,651	$1,281,366	$435,715	52
Ogdensburg, N.Y	125,889	308,205	182,316	145
Seattle, Wash	147,270	208,333	61,063	42
Buffalo, N.Y	110,164	126,281	16,117	15
St. Albans, Vt	53,605	108,172	54,567	102
Portland, Maine	23,109	49,815	26,706	116
Pembina, N. Dak	4,594	15,620	11,026	240
All other	1,271	1,323	52	4
Total	1,311,553	2,099,115	787,562	60

ESTIMATED LONG TONS—EXPORT COMPARISONS OF CALENDAR YEARS 1979 AND 1980 FOR U.S. CUSTOMS DISTRICTS WITH 1980 TRANSSHIPMENTS OF 10,000 ESTIMATED LONG TONS OR MORE

Customs district	1979	1980	Ton change	Percent change
Detroit, Mich	$390,238	488,280	98,042	25
Seattle, Wash	284,301	380,765	96,464	34
Ogdensburg, N.Y	74,214	115,955	41,741	56
Buffalo, N.Y	61,098	73,226	12,128	20
Portland, Maine	35,659	65,621	29,962	84
St. Albans, Vt	32,869	44,014	11,145	34
All other	8,071	11,431	3,360	42
Total	886,450	1,179,292	292,842	33

TRANSSHIPMENTS BY COUNTRY

Exports

Table 3-E ranks the top ten export trading partners, transshipping via Canada, by descending 1980 dollar value. The United Kingdom, Belgium/Luxembourg and the Federal Republic of Germany accounted for almost 50 percent of the total dollar value, but only one third of the estimated tonnage. It can be assumed that a large portion of the extremely high increases for dollar value and tonnage increases to the U.S.S.R. were caused by the East and Gulf coast longshoremen's embargo on cargoes destined for the U.S.S.R.

The top ten export recipients accounted for approximately 88 percent of the total dollar value and 85 percent of the estimated long tons. However, the increases from 1979 to 1980 were 58 percent for the top ten and 78 percent for all others. Corresponding increases for estimated tons were 25 percent and 104 percent.

TABLE 3-E.—COMPARISON OF U.S. EXPORTS VIA CANADA FOR 1979 AND 1980 FOR THE TOP 10 DESTINATION COUNTRIES BY DOLLAR VALUE

Country	Dollar value (thousands)			Estimated long tons		
	1979	1980	Percent change	1979	1980	Percent change
United Kingdom	$319,339	$429,510	35	169,391	185,118	9
Belgium/Luxenbourg	204,705	329,967	61	81,933	91,697	12
West Germany	205,867	285,623	39	100,966	116,147	15
U.S.S.R	487	232,108	47,561	276	48,950	17,636
Netherlands	147,935	193,552	31	160,587	161,796	1
France	146,429	181,820	24	96,076	106,907	11
Japan	34,304	70,967	107	114,735	201,340	76
Australia	36,935	52,461	42	16,810	23,470	40
Italy	41,197	51,778	26	39,032	43,871	12
Switzerland	30,962	16,503	−47	16,769	16,503	−2
All other	143,393	254,824	78	89,875	183,593	104
Total	1,311,553	2,099,115	60	886,450	1,179,292	33

Imports

Table 3-I shows U.S. imports transshipped through Canada from the top 10 trading partners for 1979 and 1980 by descending 1980 dollar value. More than 50 percent of the 1980 total dollar value and 38 percent of the estimated long tons were shipped from the Federal Republic of Germany and the United Kingdom.

The top 10 importing countries represented 84 percent of the 1980 total dollar value and 75 percent of the estimated long tons. Changes from 1979 to 1980 show a less than one percent increase in dollar value for the top 10 and 34 percent for all

others. However, the tonnages were decreased by 17 percent for the top 10 and 28 percent for all others.

TABLE 3-I.—COMPARISON OF U.S. IMPORTS VIA CANADA FOR 1979 AND 1980 FROM THE TOP 10 COUNTRIES OF ORIGIN BY DOLLAR VALUE

Country	Dollar value (thousands)			Estimated long tons		
	1979	1980	Percent change	1979	1980	Percent change
West Germany	$638,924	$576,843	−10	260,897	205,976	−21
United Kingdom	455,711	558,656	23	166,388	163,066	−2
France	218,074	214,833	−2	111,955	107,525	−4
Japan	78,949	120,415	53	33,502	79,223	137
Belgium/Luxembourg	158,982	114,472	−28	101,976	59,956	−41
Zaire	103,431	61,761	−40	2,010	1,270	−37
Italy	64,100	56,174	−12	23,824	26,019	9
Switzerland	46,126	49,585	8	13,308	11,707	−12
Netherlands	45,968	44,902	−2	28,416	30,433	7
Australia	14,777	29,496	100	143,345	50,438	−65
All other	263,245	353,063	34	340,152	246,236	−28
Total	2,088,287	2,180,200	4	1,225,773	981,849	−20

TOTAL EXPORTS/IMPORTS

	Import	Export	Total
1979	886,450	1,225,773	2,112,223
1980	1,179,292	981,849	2,161,141

Senator GORTON. Thank you very much.

In connection with our questions, of course, we would be happy to have you answer them or any of the members of your panel as well and any statements they have will be included in the record.

Perhaps the most fundamental question is why should protection of what you denominate as "traditional inland patterns of movement" concern us at all when a free market philosophy suggests that the competitive flow of commerce will cause shippers to move cargo over the paths which serves each of them best?

Mr. BRADY. I would think so, but the thing is if one side is burdened with a set of rules and regulations while the other one is not, then it wouldn't give us the same opportunities to compete for this commerce.

Senator GORTON. Is the thrust of what you say that our primary concern should be to preserve the tenent of our shipping laws that similarly situated shippers be treated alike?

Mr. BRADY. That is true, yes.

Senator GORTON. Then should we not wait until we hear comments from shippers on whether or not they wish the passage of this bill?

Mr. BRADY. Well, we have heard some comments before on H. R. 3637 which is a similar bill to S. 2414. The ones we have heard so far have been objecting to the passage of H.R. 3637.

Senator GORTON. That is the shippers are opposing this bill.

Mr. BRADY. They are opposing, that is right.

Senator GORTON. Well, if shippers should be our primary concern, should we not follow their advice in connection with the bill?

Mr. BRADY. Well, again, we are looking at a bill which puts an undue burden on our side of the fence, on the port side. We have no objections to shippers using the Canadian ports, as we said in our testimony. Just that if the carrier solicits through intermodal movements and arranges for the through transportation of his goods, we feel those rates should be on file and give us the same fair chance as they have in soliciting the same type of cargo.

Senator GORTON. Can you tell me why it is that you think that it is less expensive to provide some forms of transportation to Europe through Montreal than U.S. east coast ports? What are the longshore labor factor costs, duration of port call, efficiency of operation, distance of voyage and for that matter I suppose some form of subsidy on the part of those carriers out there. What causes it?

Mr. BRADY. Well, I can only say this. I don't know what causes it, but when financial problems did arise from Cast and the Cast situation, they increased their rates and put on surcharges, which were higher than the regular conference rates out of the North Atlantic ports. So I have to assume that there must have been some kind of subsidy involved in these rates.

Senator GORTON. Well, of course we subsidize our carriers, too, don't we?

Mr. BRADY. We do to some extent, right.

Senator GORTON. But you know nothing that would cause this diversion to Canada other than subsidized rates?

Mr. BRADY. Well, let's say I think the Cast operation is a new form of a transport of cargo with a combined bulk and container cargo together which gives them a little more opportunity to maybe reduce their cost relying on the base cargo which is the bulk cargo in the ship. So that may be some advantage they do have and a new form of handling cargo.

Senator GORTON. But that is the only other factor?

Mr. BRADY. I would say mostly all the other factors they have to incur is the same for all ports, how high or how low, I don't know. There may be some advantages in some areas in certain ports.

Senator GORTON. Now you have quoted in your testimony some very impressive figures about the increase, almost a quadrupling of value of American cargo going through Canadian ports in 8 years and almost a doubling of the volume during that period of time. I wonder if you can tell me how those figures compare with the increase of growth of all cargo exported from the United States in the same period? That would be the first part of the question. And how does it compare with the growth of Canadian cargo movements through U.S. ports in the same 8-year period?

Mr. BRADY. I am sorry, I don't have those figures. I can't compare them to the growth of all U.S. cargo, but I could get the figures for you and give them to you.

Senator GORTON. It would be very helpful to us to have those comparable figures if you can get them to us.

[The following information was subsequently received for the record:]

The Port Authority of New York and New Jersey's statistics are limited in the breakdown between Canadian and U.S. cargoes. The attached table indicates the 8-

year growth period in U.S. bulk and general cargoes. We are sorry, but we do not have similar figures for Canada. The only figures we have knowledge of are the tonnage figures of March 1982, as reported by the Maritime Administration which we attached to our statement.

U.S. OCEANBORNE CARGO

[Long tons]

	1973	1981	Percent change
U.S. oceanborne exports (bulk and general cargoes)	226,049	338,893,483	+49.9
U.S. oceanborne imports (bulk and general cargoes)	390,919,199	412,485,812	+5.5
U.S. oceanborne trade (total)	616,968,305	751,379,295	+21.8

Mr. MORICONI. Mr. Chairman, may I be permitted a word?

Senator GORTON. Of course you can.

Mr. MORICONI. With regards to the first part of your question, I have no idea either, but as regards to the second part of your question, the fact is the Canadian ports are similar somewhat to Boston. We do not have service to all ports in the world and therefore you have to rely on other ports to ship your cargo.

Now, for example, you cannot ship to South Africa by Boston, and chances are that if somebody looks to some of these Third World countries, you cannot ship out of anywhere other than perhaps the larger ports like New York and Seattle.

So, the Canadians close to the border must use U.S. ports because they are capitive to us in some of those key areas. Canadian cargo comes to the U.S. ports essentially because in some key areas of the world they have no service, but in other areas that are off the beaten path they have to rely on the larger U.S. ports.

Senator GORTON. Like shipping from Montreal.

Mr. MORICONI. That is right. This is what is so terrible about the cargo diversion because what the Port of Montreal does, or indeed diverting, and there is a lot of diverting carriers and not just Cast, and we in Boston are the first to feel it because of the proximity of our port to the Canadian border. But what this does is that they provide service to key ports and not service to everywhere like, you know, the U.S. ports have.

So I think the American shipper has to either pay now or pay later, meaning that if they want to use the Canadian ports, great, to certain areas, but what happens when you want to ship to Guam or when you want to ship to some other part of the world where Canadian ports are not sophisticated enough to go? OK, this is the key. So the shippers have a responsibility, Mr. Chairman.

Senator GORTON. I think that is a very good point. But I take it you, no more than Mr. Brady, have any idea of whether there has been any growth of Canadian cargo shipments to the United States in the last 8 years?

Mr. MORICONI. I have no idea. You know, I used to be a statistician before I came into my first position, and, as I recall in 1972 I made a study of the Canadian cargo diversion because it began to affect us very much. We were right there. You know, Boston is very easy plucking. You know, there was no big fluctuation. It seems to me, as I recall from those figures, the Canadian cargo

moved through New York or other U.S. ports only when they had no such service from their ports.

Remember, also, the Canadian ports have only became very sophisticated in the past 10 years for which they should be commended.

Another thing that I want to say, Mr. Chairman, is that while every U.S. port in the North Atlantic has reported increasing container traffic in 1981, the Port of Montreal has reported an increase of 15 percent to a record level of 330,000 containers in which largely they took off our hides. While they were reporting these big growths we were laying off longshoremen in Boston and I would like to say to this committee that it is about time that the Justice Department and the Department of Commerce and the Department of State for once to just look at the effect it has on American jobs and forget the tender feelings of our Canadian friends over the border.

The cargo that is being diverted right now, Mr. Chairman, from the Boston area used to flow through the Port of Boston and the only reason it is flowing through the Canadian ports is because of the contacts individual shippers make, you know, special deals with the possibility American carriers could, shall we say, match. The problem is that you can't match what you don't know.

Mr. BRADY. Excuse me, Mr. Chairman, on the attachment that we included in our statement, that was the U.S. imports/exports transshipped by Canadian ports, the MarAd Report of March 1982, it says the U.S. waterborne trade in 1979, total 823.1 million long tons of which 57 million tons were liner cargo and 2.1 million tons were transshipped through Canada. It says, similarly, 61.2 million tons of total liner cargo for U.S. imports and exports can be compared to 2.2 million tons transshipped in 1980. So there are statements compiled on the tonnage.

Senator GORTON. The last question. If your primary goal was to achieve parity of regulation, could we not achieve that parity of regulation by simply following the administration's recommendation and eliminating tariff filing and enforcement in all U.S./foreign liner trades?

Mr. BRADY. Yes, that could happen. That would solve maybe one part of the problem, but it wouldn't solve the greater problem throughout the world of not being able to determine what the rates are all over the world. That is why we support the current filing of tariffs as both the House and the Senate has come up with.

Senator GORTON. Thank you very much. Senator Inouye.

Senator INOUYE. It has been suggested that S. 2414 impacts on Canadian commerce because it requires ocean carriers hauling U.S. cargo which moves through Canadian ports to file tariffs with the FMC. I am not certain if you are aware, but Canada presently has a tax law which prohibits its merchants from claiming as a business expense the cost of advertising on U.S. TV stations which serve Canadian viewers. This of course has the effect of reducing revenues for those American TV stations.

Doesn't Canadian tax law impact U.S. commerce even more directly than this bill, S. 2414 impacts on Canadian commerce? After all, under this bill U.S. shippers are not penalized for using Canadian ports. Do we have any penalty here?

Mr. BRADY. I am not knowledgeable on this tax law.

Senator INOUYE. We are talking about sensitivity. I think Canadians should be a bit more sensitive to our concerns. It is pointed out that while the United States has a Canadian cargo diversion problem on the east coast, the Canadians have an American cargo diversion problem on the west coast.

Would it be accurate to say that the reason U.S. west coast ports are handling Canadian cargo is that U.S. ports offer better service? Whereas the reason Montreal is handling U.S. cargo are the lower rates Cast is presently charging?

Mr. BRADY. That would be my opinion. I understand that the service is better through the west coast ports, and of course we know the rates are lower via Cast through Montreal as reported through shippers who have told us so.

Senator INOUYE. Would that situation change on the west coast if Cast type operators began moving to the west coast?

Mr. BRADY. True, it could. The same situation could prevail on the west coast and it also could prevail down through Mexico. Diversion of the same sort could happen in those areas, too. It is just we haven't seen any operators that were smart enough to start up at this time.

Mr. MORICONI. The trend is beginning to change. It is foolish to assume, west coast diversion will not occur, but we see the reluctance there is in the administration to pass this legislation for remedy needed. For example, the other day there was a notice in the Journal of Commerce that I scanned which showed a large conference of carriers from the Far East that were switching over from Seattle to Vancouver.

Now, I would have to say that when somebody does that, it is clearly evident that they are trying to escape U.S. regulations. You know, in other words, they are trying to do what everyone else is doing. So that you will see that the trend of cargo movement will also change for the west coast if such an advantage for the Canadian ports indeed exists now. So you will see that a lot of the American foreign trade will move through contiguous nations, whether it be Mexico or Canada. Unfortunately by that time they will sink us up in Boston.

Senator INOUYE. I gather that the Boston port is now hiring less people than it did, say, 5 years ago?

Mr. MORICONI. Well, we are not hiring period. What it is is we are trying to get rid of the ones we have got. We had an 18 percent drop in container cargo, and you must understand that it comes at a time where Boston is not really hurt by the recession because of the fact that we are dependent on the high technology interest in the industry which has not really suffered. As a matter of fact, our total unemployment picture in Massachusetts is 7.5 which, as I understand, is below the national average. So what it is is this 18 percent drop in cargo, you know, it is all in Montreal. That is what the Port Director of Montreal was boasting about. You know, I can't say it is all Boston cargo, but they are sure cutting us up.

Senator INOUYE. What about railroad service to your port?

Mr. MORICONI. Well, the Port of Boston does not extend itself beyond perhaps a 150 miles natural tributary area, if such word can still be used. It is only about 125 or 150 miles out. We are not

claiming cargo that originates in Detroit. We are claiming our local area. We are claiming Massachusetts. We can't even hang onto our own New England cargo. You know, it is being diverted by the tactics of Cast, the major predator, but there are a lot of other diverters up there. There are CD ships and there are also a lot of lines that have two different services now, one Canadian and one American, and they are competing against each other.

I have actual cases to my knowledge of cargo that used to move to Boston that is now going through Canada. You know, it is being trucked to Montreal and railed to Halifax for $400 and the ocean rate from Halifax is $600. That is a fact.

Senator INOUYE. Then if this type of remedy is not adopted, would it be reasonable to assume that more of our investors would place their ships in foreign registry and start doing business in Vancouver and Montreal?

Mr. BRADY. It certainly would be the practical way of doing business. You know, we in the United States are hampered by these regulations and there is no regulation up in Canada. That is the only way they can survive. I think that you will see a lot more foreign flag vessels doing that.

Senator INOUYE. Then our Merchant Marine would therefore be minimized.

Mr. BRADY. Correct.

Senator INOUYE. Is there any reason to believe, as it has been alleged by some, that Cast is skimming. That is selectively seeking cargo in the United States which for one reason or another is the most lucrative and leaving the remainder to move through United States ports?

Mr. BRADY. We believe this is so.

Senator INOUYE. Can you give us a few examples?

Mr. MORICONI. First of all, I think that it is difficult. With regards to Cast, I have no examples to give you, with the exception that I do have a lot of paperwork on it. See, there is no tariff to look at, or if it exists I have never seen one, although, dammit, I have written several times to Montreal asking for a copy of the rates. In other words, it cannot be said that I have not tried. I have written to Montreal. The Cast office in Boston is right upstairs from where we are, and I am friendly enough with the staff, but you can't get any idea of what the rates are.

But I do have correspondence from shippers where these shippers said that, they were offered substantial reductions in rates which lasted a certain period of time. In other words, a container of computers, for example, or something to that effect, of high technology goods that would move at around $4,000 through the Port of Boston or any U. S. North Atlantic port, was reduced to some ridiculous rate of $2,100, to simply capture the cargo.

I have no instance that I can say to you that a shipper has come to me and said I asked Cast for a container and I didn't get it. Cast does not fulfill the common carrier obligation as we know it in the United States. Service depends on how much cargo they may need to fill that particular ship at that particular time, and certainly they are not open to serve all shippers alike.

I have no documentary evidence to show you Senator. I mean, this is just the intelligence information that somebody has told to us which we have gathered from time to time to defend ourselves.

Senator INOUYE. From your industry grapevine, your intelligence, what about rebating?

Mr. MORICONI. I have no idea. I couldn't say.

Mr. BRADY. I think we do have some information.

George, did you have something you wanted to say?

Mr. MOHR. Senator, I think my prepared statement will give you some examples of what you are looking for. I prepared this statement as a supplement to what Mr. Brady said and it was to illustrate certain of the problems that we are having.

Just to set the record, I represent the Delaware River Port Authority which covers solicitation and the interests of the Port of Philadelphia.

Several months ago a shipment of cocoa beans was discharged in Philadelphia but was declared unfit to be brought into the United States. The owner of the cargo arranged to sell it to a customer in Europe. He received a quotation from an ocean carrier serving the Port of Philadelphia. However, the cargo eventually moved via Montreal because we were told the overall rate was cheaper. We have no way of determining how much cheaper because the Canadian carrier does not file a tariff with the Federal Maritime Commission. Understandably, the party paying the bill is not going to divulge the information. Thus, the U.S. port and the steamship carriers serving the port is handicapped in its efforts to compete.

Another situation developed just last week with ConRail. The receiver located in Erie, Pa., was receiving regular shipments of foundry castings from the United Kingdom. Since ConRail has its headquarters in Philadelphia and the consignee is located in Pennsylvania, this would be a movement that would be especially attractive to the Port of Philadelphia.

ConRail was unable to determine on its own what the rate via Montreal was and sought the help of the Delaware River Port Authority which has a European office. This is a very roundabout way and time consuming for the railroad to develop a competitive rate. It could have been avoided if the Canadian carriers were required to file tariffs with the Federal Maritime Commission in the same manner that all carriers who serve U. S. ports are required to do.

If the carriers operating within the boundaries of the United States are to maintain their competitive position, it is absolutely necessary for all other parties soliciting the cargo to abide by the same rules. The Port of Philadelphia estimates that the diversion of cargo has resulted in a loss of 1,025 jobs in the Philadelphia Port area.

With the economic condition as it is today and unemployment at a high level, longshoremen in our area should not be deprived of work because of a peculiar loophole in the Shipping Act of 1916. S. 2414 will correct this situation as far as the Shipping Act is concerned and enable all parties soliciting international cargo to compete on an equal basis.

Senator INOUYE. Thank you very much.

Mr. Chairman, I have several other questions I would like to submit to the panel.

Senator GORTON. Fine. Additional questions will be submitted to you in writing and we appreciate your interest.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS THERETO

Question. According to recent Marad statistics, in 1980 nearly 2.2 million tons of U.S. cargo worth $5 billion moved via Canada. And U.S. cargo may continue to move via Canada even if S. 2414 is enacted.

(A) Isn't it true under our law, U.S.-vessels which receive subsidy (all but Sea-Land) could not compete in Canada for that cargo? In other words, Lykes, or U.S. Lines, for example, could not afford a service between Montreal and Antwerp.

In other words, we have a situation where the major portion of U.S. cargo shipped from U.S. ports moves on foreign-flag vessels; and only one U.S. carrier is eligible to compete for the remaining U.S. cargo which is shipped through Canadian ports.

(B) Is this situation consistent with the mandate under the law that we carry a substantial portion of our cargo?

Answer. (A) U.S. steamship lines operating under subsidies from the U.S. are not allowed to handle cargoes from Montreal to Antwerp.

(B) This situation is not consistent with the law that mandates we carry a substantial portion of our own cargoes.

Question. This morning the committee will hear testimony that on the matter of cargo diversion "there was a slight imbalance in Canada's favor for 1980, according to available public documentation. On east coast traffic, this added up to 60,899 TEU's (twenty foot container equivalent units). However, on the west coast the surplus was in favor of U.S. ports, totaling 55,523 TEU's. In total, therefore, the overall imbalance was a relatively small 5,372 TEU's in Canada's favor for 1980. For the entire 1976–80 period, overall imbalance is in the U.S. ports' favor by 28,583 TEU's.

Would you please comment?

Answer. The overall imbalance for the U.S. ports favor for the 1976–80 period is proper when you consider the limited steamship service that exists from a Canadian port, especially on the West Coast. The figures are showing major increases for Canada's East Coast ports at present, where the major expansion of container services is taking place. Future expansion will come to the Canadian West Coast ports.

Question. Canada has claimed a "nearly balanced amount of cross border diversions between it and the U.S."

On the other hand, according to one analysis, U.S. figures show a nearly 2–1 loss in U.S. cargo to Canadian ports as compared to Canadian loss to U.S. ports.

Would you care to comment?

Answer. I would just like to say that the 2–1 loss in cargo applies mainly to the East Coast ports, where the major diversion of the Midwest cargoes is taking place.

Question. There have been allegations that Cast has offered "lower-than-cost" on transportation of containers to selective shippers in an effort to get their business.

This, of course, has been denied, and we have no way of knowing because Cast is not required to file tariffs.

On March 1, Cast introduced a $275 surcharge on its container prices because it found itself in serious financial difficulty.

Before Cast imposed that surcharge, Cast's container business was running at about 125,000 TEU's (20-foot equivalent units).

After the surcharge was imposed, that 125,000 figure dropped to 80,000.

Doesn't this suggest that CASt may have been pricing some of its services too low?

Answer. It certainly does. We feel that when the Canadian National decided to withdraw its financial support and Cast could no longer depend on a subsidy to handle cargo at the extremely low rates they were quoting, they were forced into a surcharge because the rates did not cover the costs.

Question. Recently, this Committee reported legislation (S. 1593) which would eliminate the FMC's authority under sec. 18(b)(5) to disapprove any rate or charge which it finds so "high or low as to be detrimental to our commerce".

If that legislation were enacted, do you still feel S. 2414 would be necessary?

Answer. Yes. We are still faced with the problem of the level of rates being charged. In order to meet the competition, we must be able to determine the charges. If S. 1593 is passed and 18(b)(5) eliminated, it will provide additional protection for Cast and Canadian carriers serving U.S. inland points against litigation. We support S. 1593.

Question. (A) If S. 2414 were enacted, is it possible that the Canadian Government would respond with a similar requirement, or otherwise retaliate?

(B) If so, as a practical matter, how would such retaliation impact on U.S. ports?

Answer. (A) The Canadian Government already has laws that require conference carriers handling Canadian cargoes over U.S. ports to publish and file rates. We are asking for the same treatment.

(B) In my opinion, there would be no retaliation. Shippers from Canada need the service the U.S. ports provide. They also need the special equipment available at U.S. ports—containers, refrigerated containers, etc.

Question. According to the critics of S. 2414, "Where a shipping transaction is entered into a foreign country and when the goods are taken in charge there by the carrier, U.S. regulation would be an infringement upon the legitimate rights of the other government concerned."

(A) Do you believe the Cast-type operation fits the above-described factual situation?

What we are talking about here is a situation where:

(a) The cargo involved originates in or is destined for points in the United States;

(b) It is shipped in containers that are loaded or unloaded in the United States;

(c) For export cargo, the bills of lading and invoices are issued in the United States;

(d) The foreign carriers offering services through Canadian ports maintain offices in the United States, advertise, and solicit business in the United States, and quote rates in the United States for the shipment of cargo from United States to overseas points; and

(e) The Foreign carrier provides overland transportation service in the United States.

(B) How can this type of arrangement be characterized as a "shipping transaction entered into in a foreign country"?

Answer. (A) No. We are only proposing the regulation of the through intermodal movement controlled by the carrier.

(B) It can not. The cargo we are discussing is the waterborne commerce of the U.S. moving on a single bill of lading.

Question. Cast, I believe, quotes a "per-container" rate to shippers.

(A) Does this allow them to divert high rated cargo, and leave the low rated cargo to other carriers?

In other words, would a "per-container" rate be low enough to make it financially attractive for shippers to ship commodities which ordinarily would move at a higher rate; and yet be high enough to deter shippers from moving commodities which ordinarily move at a lower rate?

(B) If so, are there potentially adverse consequences to a trade?

Answer. (A) I believe the sales policy of Cast is designed to capture the highest-rated cargoes and to avoid low-rated commodities. The "per box" rate gives Cast flexibility in pricing, but the "per container" rate is not needed to discriminate between shippers because they are not under any common carrier obligation as we know them in the U.S.

(B) The consequence to the trade is that Cast is able to capture the highest-rated cargoes and leave the less desirable to carriers serving U.S. ports. Not being able to average the total voyage cost over the total cargo mix, will increase the rates for the marginal freight and may force the shippers out of the export/import market; a situation not good for our balance of payments.

Question. (A) Would S. 2414 alter any cost advantages which Cast or similar carriers realize by moving cargo overland from points in the United States through Canadian ports to foreign destinations?

(B) Would it alter the rate Cast could charge shippers?

Answer. (A) S. 2414 will not alter any cost advantages offered by Cast or other carriers moving cargoes over Canadian geteways.

(B) S. 2414 would only require the publication of the rates and the filing of a tariff. A cost for publishing and filing a tariff is minimal.

Question. Can you give any specific examples of the cost differential in moving a 40 ft. container from an inland point in the United States to a European destination via a U.S.-port on one hand, and via Cast on the other?

Answer. We don't have copies of the Cast rates; even if the Cast rates were published on a sheet, they might not be the rates that are quoted. We have been told from steamship and shipper sources that the differential is between $1,000 to $2,000.

Question. Cast has compared the cost of docking a vessel at New York with that of Montreal, indicating that the New York cost is $23,094 for 3 days as compared with $14,133 at Montreal. Can you explain the difference in these costs?

Answer. The cost quoted in New York, if examined, would possibly reveal that it reflects the published U.S. charges for all similar ships. As the Board stated in previous testimony, before the House, H.R. 3637, Cast has some special deals at Montreal. We do not know what these deals are, but we feel that they do not apply to all steamship companies serving Montreal; therefore, it is impossible to compare apples to apples in this particular case.

Question. According to the National Industrial Traffic League's testimony, "As noted in the March issue of 'American Shipper,' a recent Maritime Administration study shows that the average labor costs per container are between 100 percent and 350 percent higher through U.S. east coast and Gulf ports than they are through Montreal. From Halifax, this difference is between 160 percent and 510 percent." Do you have any comments on this article?

Answer. Attached is a white paper in which we answered the "American Shipper" article.

NEW YORK PORT COSTS

Before the advent of containerization the handling of cargo into vessels was labor intensive involving multiple movements and many manhours of activity in transferring the goods from inland carrier into ships. This resulted in congestion at the port area and ensuing delays to fast efficient service. In 1966, as an example, over 40 million ILA man hours were worked in handling nearly 20 million long tons of foreign and domestic general cargo in the Port of New York; a port which specialized in piece-by-piece handling of high value volume cargo.

During this past decade, containers have changed this labor intensive industry into one which is capital intensive requiring high cost, specialized equipment and communication systems. Today, with only 15 million ILA manhours of activity, 20 million long tons of cargo are handled (a dramatic increase in man hour productivity). In the pre-containerization era, 80 percent of the cost of handling cargo was said to be pure labor costs, today labor costs in the container mode based on a recent MarAd study account for approximately 30 percent of the cost of handling in the Port of New York. This cost includes the statutory costs of social security, unemployment insurance, and excessively high workmen's compensation charges amounting to 60 percent of the direct wages. These charges are a result of the Longshoremen and Harborworker's Compensation Act and its interpretations which have placed excessive costs on steamship lines, partially by extending coverage into activities other than cargo handling. As a result, steamship lines wishing to serve this port are faced with competition from lines serving Canadian ports where compensation costs are 3 percent of direct wages.

Much has also been said about the ILA and the high cost of labor in New York vis-a-vis other ports supposedly placing the port at a competitive disadvantage. For this reason, it is felt a discussion on this topic is warranted. Although there is a master ILA contract for all ports on the U.S. Atlantic and Gulf coasts setting the same level of wages and fringe benefits, the New York contract provides for a different method of funding the fringe benefit requirements. In other ports, fringe benefits which include pensions, welfare, clinics, vacations, holidays, GAI and security funding are collected on a man hour and included by the employer as part of the stevedoring cost to the steamship operator. Also included in the stevedoring costs are the direct wages, social security taxes, unemployment insurance, workmen's compensation plus administration and profit. In New York, stevedoring costs include only direct wages, social security, unemployment insurance, workmen's compensation, administration and profit. The fringe and accessorial funds such as security and New York Shipping Association administrative costs are collected through the tonnage assessment charge against the steamship operator.

Since 1976, in spite of contractual increases in fringe benefits and inflationary pressures there has been no increase in the tonnage assessment in New York while in every other port the fringe benefit man hour costs have increased every October 1st. In essence, this means the Port of New York's position insofar as the ILA labor costs relative to other U.S. North Atlantic ports has significantly improved. The rate of $5.85 per ton in New York generates funds to provide, according to the contract, the union membership with the following:

1. over $1.80 for pensions
2. over $1.15 for medical services and welfare
3. over $1.70 for vacations and holidays
4. The remaining $1.20 covers other fringe benefits including supplemental income, contract administration, NYSA administrative costs and GAI. The cost comparison of the various North Atlantic ports is shown in the attached Exhibit I.

Also attached for ready reference is Exhibit II which compares the cost of a longshoreman in Montreal with that of a longshoreman in New York. The costs shown are those in effect as of January 1, 1982, and include only direct wages, fringe benefits (Montreal), taxes, and compensation. Not included are the administrative costs and profit margins of terminal operators.

As can be observed New York already has a lower direct cost for labor. If the previously referred to cost of 60 percent of direct wages in New York and 3 percent in Montreal for workman's compensation are extracted then the New York labor cost per hour would be $14.08 per man compared to $22.25 per man in Montreal, a differential of over $8.00 per man hour in favor of New York.

The preceding paragraphs dealt in the area of longshoremen costs. These charges including such items as the tonnage assessment in New York, fringe benefits, insurance, taxes, etc., are considered stevedoring costs and are paid for by the ocean carrier. These as well as many other direct and indirect costs such as pilotage, fuel, depreciation, etc., are included in the construction by the ocean carrier of the Ocean Freight Rate.

There are two determining factors in building a Ocean Freight Rate in ocean transportation.

1. The carrier's cost of producing the service including the very minor factor of ILA longshore labor costs as will be demonstrated in subsequent paragraphs.
2. The price the shipper is willing and able to pay for the transportation.

Both factors represent the minimum and maximum levels respectively. The range between the two allows for the establishment of the market place level of the rate after consideration of other factors such as:

1. Competition
   a. other carriers
   b. market
   c. port
2. Type of Service
   a. regular conference or non-conference
   b. non-regular
3. Volume of Business
4. Allowance for claims and damage
5. Value of Commodity

The "American Shipper Magazine" in its March 1982 edition cited the U.S. Maritime Administration report previously referred to in listing labor handling costs per container in various ports. Exhibit III reproduces those costs as developed by MarAd for the ports of New York, Baltimore, Montreal and Halifax. Although the costs shown could be subject to question within a $15 range, they are sufficiently accurate to demonstrate the miniscule affect ILA labor costs have on establishing Ocean Freight Rates.

OCEAN FREIGHT RATE

[Approximate]

	New York/ Rotterdam	Montreal/ Rotterdam
Rate	[1] $1,800	[1] $1,300
Labor costs per container (Marad)	[1] 38.68	[1] 16.41
Labor cost to ocean rate (percent)	2	1

[1] Per container.

Even after a freight rate is determined, carriers serving U.S. ports are require to file the tariff of rates with the Federal maritime Administration and, in addition, are generally required to have an equalized rate structure between ports. Therefore, a lesser ILA labor cost in one U.S. port over another has no affect on the Ocean rate a shipper will pay in using that port.

From the above it becomes apparent that no port or state exercise any degree of control in that situation. Rather, rates are a reflection of the market place and the competitive situation between carriers. A good example of this competition is the diversion of cargo from New York States sources as well as other U.S. cargoes through the Port of Monteal. This situation has been able to develop because a carrier serving only Canadian ports can set any level of rates which include even inland transportation in the United States free of U.S. Law requiring the filing of tariffs. Even amongst Canadian ports this has posed a problem. The Port of Halifax

is losing tonnage and steampship lines to the Port of Montreal. This in spite of the fact that labor costs as shown in Exhibit III are less in Halifax and the ocean carrier is faced with higher costs incurred by steaming a longer distance to Montreal. Again, the market place and competition appears to be the criteria in rate making.

To the shipper, low rates in the short term are attractive, however, if non-compensatory to the carrier then disruptions in shipping can occur leading to instability affecting all. This situtation appears to be developing in the case of the Montreal based carrier Cast. It would appear that shippers although not directly benefiting from labor-cost savings to the carrier can aid the economic vitality of their states by supporting ports within the state. This would not only provide more employment for labor in Ports such as New York but would also provide shippers thge fast, efficient, and stable platform needed in the overseas sales and movement of goods.

EXHIBIT I.—U.S. NORTH ATLANTIC PORTS: NEW YORK, PHILADELPHIA, BALTIMORE, HAMPTON ROADS

	Oct. 1, 1976	Oct. 1, 1981
Fringe benefit costs per man-hour:		
Philadelphia	$4.51	9.40
Baltimore	4.44	7.20
Hampton Roads	5.13	[1] 9.39
Fringe benefit costs per ton:		[2] 9.79
New York	5.85	5.85

[1] This is for breakbulk operations.
[2] This rate is for container operations.

EXHIBIT II.—LONGSHOREMAN COSTS: MONTREAL, NEW YORK

	Montreal	New York
Direct cost (per manhour)	$22.95	$21.75
Tonnage assessment (per ton)		5.85

Exhibit III.—Labor handling cost per container

	Average labor cost per container
New York	$38.68
Baltimore	38.96
Montreal	16.41
Halifax	12.14

Senator GORTON. We will now change our order a bit and ask to hear from Thomas Gleason, president of the International Longshoremen's Association.

STATEMENT OF THOMAS W. GLEASON, PRESIDENT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

Mr. GLEASON. Mr. Chairman, my name is Thomas W. Gleason. I am the president of the International Longshoremen's Association, AFL–CIO, which represents over 100,000 members in 34 States.

The bill before you is a companion to H.R. 3637, issued by the House Committee on Merchant Marine and Fisheries. It is very important to my members and, I will submit, to our country's economic interests.

The House report on the bill noted that in recent years there has been an increasing amount of containerized cargo originating in or destined in the United States moving through Canadian, rather

than United States, ports. The statistics are set forth at length in the House report. I will not take your time to repeat them, other than to note that it has been estimated that in 1979 the movement of such cargo through Canadian rather than U.S. ports resulted in lost activity to American interest in the no longer avoidable sum of 68,000 containers, plus thousands of truck movements and rail car movements and hundreds of port-related jobs.

This has been referred to time and again as the "Canadian diversion problem." It was created in large part by the maneuverings of a company known as Cast North America. It is a European-based group that has been active in the North Atlantic trade. Using the Port of Montreal in particular, Cast has been sending its trucks and using rail containerization via Canada to pick up containerized cargo in the United States and to move it across the border into Canada and from there ships the cargo to Antwerp.

We have no argument with Cast's operation so long as it does not put American companies and American workers, including longshoremen, at a disadvantage. The purpose of the bill before you is to require Cast, like American carriers moving cargo through U.S. ports, to come within the jurisdiction of the Federal Maritime Commission by filing tariffs and otherwise to be subject to the provisions of the Shipping Act to the same extent as carriers operating out of the U.S. ports.

We in the ILA cannot find any legitimate reason why Cast or any other foreign-based company, whether working through Canada or Mexico, that seeks to compete in the United States and in U.S. markets to be subject to the same rules of the game as corporate citizens of the United States with whom they compete.

The bill would require Cast or any other ocean carrier serving ports in areas contiguous to the United States to act in the same manner as those using our ports. This does not breach any sovereign state's rates and does not stop Canadian or Mexican companies from competing in this country.

The bill does not seek to discriminate against Montreal or any other port. It is aimed at nonsovereign entities such as Cast which, after all, is a corporation and not in reality a Canadian one at that. It does not ban Canadian or Mexican vessels from entering our ports or from competing in our markets. All it does is to require that these firms live up to the same rules as their colleagues in the marketplace.

The bill plugs a hole in the Shipping Act which should never have existed and I am sure was never meant to be there. It is one that puts regulatory requirements on ocean carriers that strengthen our economy by operating through our ports, but which lets a foreign carrier skim his business off. To my mind this is a penalty, not the incentive or award that might have been.

The result will only give U.S. firms, whether or not they be members of conferences, a fighting chance to compete. As pointed in the House report, Cast is a highly efficient carrier providing excellent, reliable service. Enactment of this bill will not change that fact, nor lessen most of the competitive advantages that Cast or any similar carrier has over their American counterparts.

It only means that the latter will have the access to the same kind and types of information regarding their tariffs and pricing as

Cast has from its U.S. competitors in formulating its rates. Indeed, just last summer one of Cast's top people was quoted as saying that such legislation cannot stop shippers seeking the most economic routing for their freight.

Mr. Chairman, I cannot for a moment buy Cast's defense that its operations are not costing American jobs simply because they are hiring drivers for their trucking operations in the United States. It avoids the main effects of its actions. The real and significant point is that for every driver that now hauls containers to a truck terminal or a railroad siding heading over the border, a score of longshore and related jobs are being lost in this country in ports bypassed by the cargo in question, ports that traditionally handled this work. In the same way, Cast claims that it employs "only 165 longshoremen" at its Montreal facilities, completely forgetting the mischief that it has created behind it in this country.

In many instances, the cargo that is being lost represents base cargo to many of the affected ports. A 1981 letter from our Local 1242 in Philadelphia, which I am attaching to this statement—I think you have got a copy; the last witness brought that up—is a pretty good case in point of what is happening every day.

[The letter follows:]

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
Philadelphia, Pa., September 9, 1981.

Mr. JAMES T. MOOCK,
Vice President, International Longshoremens Association,
Port of Philadelphia

DEAR JIM: I wish to explain to you the situation in the Port concerning 30,000 bags of cocoa beans which were discharged from the M/V *Manthos*, the ship finished discharging August 17, 1981, more than three weeks ago. There has been no delivery of the beans until this date, September 9, 1981. Maislin Trucking Co. has begun to take delivery of the beans. The Delivery Clerk has received orders from the Customs Broker, Morris Friedman Co., to deliver the bags to Maislin, in bond, to be taken to Canada.

It is my understanding that the bags will be taken to Cast Steamship Co., where they will be unloaded and stuffed into containers. The final destination is Amsterdam, Holland. There are Carriers who call at the Port of Philadelphia who I am sure would have been glad to load these containers on their vessels.

If these beans were stuffed into containers at the Pier, it would have been a great help to the various Locals involved, and a sizable amount of hours generated for the various funds.

I understand the cost of loading each truck is $573. There are close to 122 truck loads. This comes to $69,906 for truck loading charges, not counting the cost of trucking to Canada, unloading the trucks, and stuffing the bags into containers in Canada. As you know, if the beans were stuffed at the Pier here in the Port, the bags would only be handled once, they will now be handled three times. There seems to be something radically wrong in this industry that something like this is happening.

I will appreciate it very much if you will enlighten me as to the reasoning behind the method being used to deliver and load the beans mentioned above.

For your information, the ship's name was M/V *Manthos*, the Carrier was Med Africa Line, CrossOcean Shipping Co. was the Agent, Woodhouse Drake & Carey was the Importers, the final destination is Amsterdam, Holland.

Fraternally yours,

JOHN RESTA, *Business Agent.*

Mr. GLEASON. What this means in the long run is that the revenue required to maintain the facilities as well as the skilled and trained work force is unavailable. I can also cite to you several illustrations of crane operators, machine operators, and similarly skilled persons leaving the industry because they are simply not

able to make it with the amount of work available. This in turn affects productivity.

Mr. Chairman, there are labor leaders in this country who can appreciate the impact of cargo diversion that this bill seeks to remedy, as myself and my colleagues in the ILA. This is but the latest confrontation resulting from the new cargo-handling technology known as containerization, which has cut deep inroads into the jobs of longshoremen over the past 20-odd years.

We have suffered for close to a decade from the legal battles and errors, compounded by the National Labor Relations Board, respecting the diversion of millions upon millions of longshoremen's work hours in the handling of cargo to off-pier facilities outside of the traditional and historic worksites of longshoremen. We have seen years of bona fide collective bargaining and stability torn asunder by Government agencies, including the very FMC which is being given jurisdiction over the bill before you, resulting in the loss and diversion of cargo which for scores of years had been handled at the pier on a piecemeal basis, to the great detriment of our members.

Of course, I am referring to what are known as the rules on containers in our contracts which sought to preserve this work for longshoremen at the piers. We resent the unwarranted interference of these agencies when they assert their jurisdiction over matters which are not within their province or violative under the acts they administer.

But unfortunately there are—and that is underlined—times when regulation becomes necessary, particularly when already existing regulation creates an unjustifiable and unintended imbalance between those who are and those who are not regulated. By this I mean that so long as the Maritime Commission is to be allowed to maintain and enforce the Shipping Act, it must be done evenhandedly with respect to all—underlined—carriers handling the U.S. cargo.

As you are aware, we have many laws requiring foreign entities, just like their domestic ones, to register in order to do business. They are required to file periodic reports, whether for business or only for statistical purposes. The principle of information and control is there.

You cannot ignore that these firms take full advantage of the transportation and other systems which have been developed with the U.S. taxpayers' money and which were created to advance U.S. commerce. These foreign entities are fully satisfied with the immense advantages that they get from using our sophisticated commercial network, but they do not like any obligations to come with them.

Mr. Chairman, I submit to you that the long-established patterns in cargo-handling practices in our industry and in our country cannot be permitted to be distorted and undone virtually overnight because of schemes devised by self-serving companies and governments. If our ports and our members are going to lose their jobs to other ports, to other countries, then at least let it not be because they are operating in the dark for lack of data, but simply because they cannot compete efficiently.

For years, you and I and the other members of this subcommittee have seen the Government of the Soviet Union use undercutting trade practices and rate wars to undermine the U.S. merchant marine by hauling U.S. cargo, not only in third flag service but right in our own ports and right under our own eyes. Just a few weeks ago, the U.S. Supreme Court declared, in effect that even if longshoremen, expressing their consciences through their union, wish to prevent the perpetuation of such diversion by countries that violate basic human rights, which they feel are repugnant to our own citizens, will be risking violating our own laws if they protest by not turning out to work those cargoes.

Now we have the State Department and the Department of Justice crying foul on behalf of the Canadian government, despite the fact that there is no exporting of U.S. regulatory law, but only because someone in Washington is looking out for this country's interests by preventing a wholesale giveaway of domestic cargo and related work. These are the same executive agencies that have handcuffed our shippers in competing with the Soviet bloc's maritime fleets that have been undercutting ours for years, and which are now threatening the domestic market since the Supreme Court has spoken and all embargoes are off.

Mr. Chairman, just how much longer is our Government and this Congress going to permit the American economy to be drained away piecemeal by foreign interests and competitors? How far are our countrymen and my members going to be asked to bend back for the sake of accommodation? Just when are we going to wake up and realize once and for all that we are no longer the world's crutch, that always has to give and in turn deny itself because we are supposedly generous old Uncle Sam who can afford to be taken advantage of by the rest of his family and friends?

I submit to you that Uncle Same has been to the doctor for a checkup and that he has not been found to be as healthy as he was 30 or 35 years ago, when he was helping everybody else to get up on their feet. The well-known diagnosis is that he is suffering from economic ills, from unemployment, from a sagging dollar.

His once-great and widespread private fleet is being sold off or forced into mothballs. Countries that he once helped, invested in and protected are standing on their own feet and, like restless nephews and nieces, are milking the company business while he is still in the front office. At times he acts like he is gullible because he sees, or is told about, what is happening to him, but he is not reacting like he did in the old days for fear that he might hurt the sensitivities of somebody whose residents are already stripping his pockets.

It is high time, Mr. Chairman, that we put a stop to all this nonsense. If Uncle Sam's sons cannot compete on an equal footing with the rest of the family, then something is seriously wrong. This committee and this Congress cannot stand idly by and watch our ports deteriorate and our equipment and our men go idle simply because they and their employers and the carriers are disadvantaged by loopholes in our own laws and regulations. It is the old story of trying to fight with one hand tied behind our backs.

However, it may have been OK yesterday when everyone was thriving. That is no longer the case. We know from reports that

have reached us that what Cast is doing is only the beginning. More and greater ports and facilities will be developed over the border, which will expand at our members' and our employers' expense if this is permitted to go by without any control or challenge. This cannot and must not be allowed to happen if the United States is to become increasingly dependent on foreign ports and facilities to handle its commerce.

As you must well know, cargo once lost is not easy to regain. Cast itself has been learning that lesson as a result of its own recent problems from which it is rebounding. Our ports and employers, beset by so many diversions, which I have only touched upon, are even more vulnerable to the effects of further bleeding of their lifeblood commerce.

I therefore urge you to overwhelmingly recommend passage of this bill to the committee as a whole and to the Senate, and to send a complete and overdue tightening of the Shipping Act to the President in the very near future.

Thank you very much.

Senator GORTON. Thank you, Mr. Gleason.

I suppose in one sense we are on the horns of a dilemma in connection with this bill. You make a very eloquent argument that the bill is relatively innocuous and will not greatly affect shipments through Montreal. But if that is true then it will not be particularly advantageous to east coast ports either.

Do you think that, if this bill passes, a substantial amount of cargo will come back to our east coast ports?

Mr. GLEASON. Oh, there is no doubt in my mind that if they have to file tariffs that people operating, steamship agencies operating in the United States will see their tariffs, and they have to compete. There will probably be rate wars. They will file tariffs too to compete with them.

Certainly it will bring business back to the ports. This has been the history of the shipping business.

Senator GORTON. As far as your union is concerned, however, most of this diversion has been in connection with containerized cargoes. So how much employment impact on your union members would you expect this bill to have?

Mr. GLEASON. Well, we are a little bit lucky. It is causing a lot of unemployment, but this is the problem with the industry. We have a guaranteed wage such as no other union in the United States has. But what it is becoming now because of no work and the men standing idly by and going to the hiring halls in the morning and not being hired, then the cost of doing business, the guaranteed wage, is going up.

In one port alone, in New York, it is costing $42 million at the present time. And this has to be passed on in some way to the shippers.

Now, part of this may be due to the recession. But if the freight that normally moves through these ports—and I happen to represent the longshoremen in Canada, both on the Canadian and Great Lakes sides and all the way up to Halifax, and I know what kind of cargo is moving through there, especially when we had embargoes.

But if we are not going to do something about this thing here, sure, people who are operating now in ports—and we for years

have advised the shippers, the shippers conferences, and we talk to them once in a while, to ship freight through their natural tributaries, to keep all these ports, the 34, 35 ports that we represent in the United States, operating. And we are doing this.

But I can see in the future—I have got 67 years in this business. Back in 1915 I joined the ILA for $2 and I never thought it was going to turn out like this. But I tell you that I was a rate clerk and I have worked superintendent and everything in this business, and I know something about soliciting cargo.

And listening to these gentlemen testify here this morning for the Government, I think we need an American desk in the State Department and I think we need somebody in the FMC that knows something about soliciting a ton of cargo.

And I was very impressed by the fellow from Boston, because they are—he was telling the truth. But the funny part about it, they have got a guy by the name of Moakley there; he is not doing too much for them, and he comes from Boston.

But we are in pretty good shape. The only thing I could see, I started out to tell you, Mr. Chairman, is this: that I can foresee four ports in the United States if this continues.

Senator GORTON. How much difference is there in longshore costs between, say, New York and Baltimore here and——

Mr. GLEASON. No, no. We have a unified contract, a national contract from Portland, Maine, to Brownsville, Tex.

Senator GORTON. No. What is the difference in longshore costs in shipping, say, through New York or Baltimore and shipping through Montreal?

Mr. GLEASON. Well, the Canadians, you know, about 15 years ago I went up there to negotiate a contract and I had the gendarmerie up there ride me out of town.

So they wanted to negotiate. I think it is about 50 cents an hour in wages.

Senator GORTON. Does that make any difference as far as you are concerned?

Mr. GLEASON. No. Our productivity is so great. As you handle volume, the more volume you handle you increase your productivity. We were the ones that put in containerization back in 1957. We foresaw this coming and we made deals to share in it. We don't mind progress as long as we share in it. That is why we got the guaranteed wage and these things that we have. Our container rules, which was part of our 1968 contract, and FMC has been handling it since 1972 and they haven't made a decision yet. I think any time you work for the Government, every day is Sunday. There is no rush.

Senator GORTON. Thank you. Senator Inouye.

Senator INOUYE. Thank you very much.

Mr. Gleason, I believe you have responded to this, but I would like to read portions of testimony, one from the Cast system and other from the International Industrial Traffic League.

This is from the Cast system:

> If it is assumed that the vessel will be docked for 3 days for loading and unloading, port charges alone, assuming a vessel of 29,884 gross registered tons and 23,094 net registered tons, will range from $20,243 in Philadelphia and $23,334 in New York and $24,599 in Baltimore, but only $14,133 in Montreal.

Mr. GLEASON. That is probably right. I think here that we have taken opposition to some of the charges by the port authorities up and down the country because, what they were originally chartered for, they are not sticking to that type of business. I think they are building hotels and going into other kinds of businesses—bridges, and stuff like that—instead of preparing facilities to handle these ships and putting a fair cost on them.

Every time the port authorities in the various ports, and I am not talking about one port authority alone, but the various port authorities feel like raising the cost of the facilities they do it, like everybody else, and this is the cost of doing business. But talking about 3 days in a port, no container ship, no automated ship stays in a port 3 days. It comes in and out. We have increased our productivity 600 percent. That ship goes out, if it is full, with three times the cargo it was brought in as a break-bulk ship and three times as much cargo as a break-bulk ship going out. In 18 hours we turn those ships around. So they are not in for 3 days, unless the company decides later to pick up some cargo or something like that. There is a variance of course in the various ports and we are working on that now to try to regulate those costs and keep costs down to bring freight in.

The unfortunate part of the whole thing is that in all these agencies there is nobody that knows how, only this group here this morning, and I know some of them, that knows how to solicit a ton of cargo and what to do with it and how to handle it. That is what we are faced with.

Senator INOUYE. What you are telling me is that your longshoremen could load and unload a ship with 23,094 net registered tons in less than 3 days?

Mr. GLEASON. Oh, sure. Not a break-bulk ship. A container ship or an automated ship, 23,000 tons, 18 hours maximum, in and out.

Senator INOUYE. Now you have indicated that your union represents the longshoremen in Canada. On an hourly basis what is the comparison on wage rates?

Mr. GLEASON. Well, it is a little different up there. It is about 50 cents an hour, as I said before. But they are parochial up there and they have their own Labor Department up there and the Government takes a very, very grim look at anybody going up there other than Canadians to negotiating that contract.

We over a period of years have tried to convince our brothers up there to go along with the national contract the same as we have in America here. We were instrumental in getting them tc put the guaranteed wage in up there and they are working under the guaranteed wage.

When Cast talks about using 165 longshoremen up there, this is not so. No container ship uses any more than 40 or 50 men. His ship, like some of the testimony that was heard before is loaded with grain or bulk cargo and the containers are put on deck and he selects the cargo or solicits the cargo, and I don t blame him for trying to manage his business and get the most out of it, the best cargo. I don't blame him for that. I don't fault him for that. But this is what he does. And like somebody says, he blue-boxes the cargo out of the United States, from the Middle Atlantic States, and probably absorbs the trucking charge into Detroit or wherever

it is, or wherever he puts it abroad the ship to bring it over to Montreal.

Senator INOUYE. Just to clarify the record, the Canadians receive 50 cents less than Americans?

Mr. GLEASON. Yes, probably. Don't hold me to that. I think it is 50 cents.

Senator INOUYE. Fifty cents an hour less.

Mr. GLEASON. Yes, 50 cents an hour less.

Senator INOUYE. Now this is the testimony on behalf of the National Industrial Traffic League. It says here:

> Another factor is transit times. At the present it takes on the average about 17 days to move freight from a midwestern point via Montreal to an inland European point. The same movement via New York takes about 19 days at a cost that is several hundred dollars higher. Ports costs are also a contributing factor. As noted in the March issue of "American Shipper," a recent Maritime Administration study shows that the average labor costs per container are between 100 and 350 percent higher through U.S. east coast and Gulf ports than they are through Montreal. From Halifax this difference is between 160 percent and 510 percent.

Mr. GLEASON. Well, it could be. I don't place too much credence in what the American Shipper says.

Again, I tell you my experience is that when we had the old break-bulk ships and what-have-you, that it all depended upon the time that it took the railroads, or the trucking, the long-distance trucking to bring the freight to the piers, and we turned it around. I think our time is shorter for us than it is for moving it out of Montreal or shorter out of Boston, especially going to the North Atlantic, than it is out of Montreal, and the time should be much shorter going out of Boston or out of New York than going out of Montreal.

The cost I think could be based on what you just read to me, Senator Inouye. The cost of the facilities or the cost of the steamship companies paying rents to the port authority may have an effect on it. But I think that what they are doing, and I have no proof of this, is that when the blue-boxes are carted away that they absorb part of this rate for bringing this freight into Montreal.

I can't see why we are so worried about how the Canadians feel about us. I am an American and I am for America first. I like the Canadians and I hope they are for Canadians first. But I think we should do what is right for this country and make it competitive with anybody else that we are doing business with because the freight that was moving out of Montreal, Three Rivers, Quebec City, Toronto, Halifax, and St. Johns was all Russian and Polish cargo that we were not handling in this country.

Incidentally, they were glad after the nine to nothing decision, sure was a great baseball game, we didn't even get one run, nine to nothing it was in the Supreme Court, when we lifted the embargo all that freight came back to the east coast. So we must have something going for us on the east coast.

Senator INOUYE. I just wanted these things to be clarified. As you know, Mr. Gleason, I am a sponsor of the measure.

Mr. GLEASON. I know you are and I appreciate that, Senator.

Senator INOUYE. I am with you, but somebody has to respond to these statements in the testimony.

My last question. How many men do you have in a gang to unload, say, a 23,000-net-registered-ton ship?

Mr. GLEASON. Eighteen men to the gang.

Senator INOUYE. And you take one gang to unload it?

Mr. GLEASON. No; well, sometimes there is only one gang. It all depends on the amount of cargo, but mostly two gangs.

Senator INOUYE. Two gangs.

Mr. GLEASON. Thirty-six men, and then you have what they call special carriers driving the containers to a plan of rest.

Senator INOUYE. How many men do you have in a gang in Canada?

Mr. GLEASON. Fourteen or fifteen men.

Senator INOUYE. How many gangs would you need for a 23,000-net-registered-ton ship?

Mr. GLEASON. Well, I think on this particular operation where he chooses and picks he probably only has one gang. He stays there, he waits there and he lays there with his bulk cargo until he tries to get enough containers to put on deck. I guess his average on deck, if I know anything about shipping, I think he probably puts about 115 to 120 containers on deck. It all depends on whether they are 20 footers, or 40 footers, or 35 footers. It all depends on how many he can get on deck, and he is very selective, as I understand it.

Senator INOUYE. Thank you very much.

Mr. GLEASON. There is only one thing I would like to close out with, Senator. Why are we hollering so much about building up the American Merchant Marine and all of these fellows from the Federal Maritime Commission and the State Department come in here and try to knock something when we are trying to do this very thing and bring freight back to the American lines.

As you know, a couple of lines went out of business already, American lines, and two or three or more are just this way, are waivering. If we don't do something, we are not going to have a Merchant Marine in this country to depend upon if we get into any case of war at all.

Senator INOUYE. Maybe as you suggested, we need an American desk in the State Department.

Mr. GLEASON. I think you do.

Senator GORTON. Senator Riegle, do you have any questions of this witness?

Senator RIEGLE. No.

Senator GORTON. Thank you very much, Mr. Gleason.

Mr. GLEASON. Thank you.

Senator GORTON. We will now hear from a panel of three representing interests in the State of Michigan, and I understand Senator Riegle would like to make a statement and to introduce them.

Senator RIEGLE. Thank you, Mr. Chairman.

I was over in the Banking Committee this morning where I serve as the ranking member. We were trying to unravel the Drysdale Securities case. I want to tell you it is a real detective story and we are not finished with it. So I appreciate your courtesy in alternating the line-up today so that I might be here with the Michigan panel.

I am wondering if it wouldn't be appropriate for them to perhaps come to the table now.

Senator GORTON. Yes, by all means, please do.

Senator RIEGLE. As they are coming up, I am very pleased to welcome a distinguished panel of witnesses from Michigan. With us today are Mr. Joseph Auwers and Mr. Eric Fornell of the Detroit Port Authority, Mr. Albert Almy of the Michigan Farm Bureau and Mr. Bernd Mueller, who is the supervisor of international transportation planning at the Ford Motor Co.

Mr. Auwers has been involved in international transportation matters for 30 years and Mr. Fornell has extensive knowledge about the landbridge system.

The other members of the panel represent two of Michigan's most important industries, farming and automobile manufacturing. These industries are the principal beneficiaries of the landbridge which is vitally affected by the proposed legislation.

I am concerned that this legislation may not achieve its stated purpose and may in fact impede the growth of exports from the Midwest. Subjecting landbridge carriers to U.S. tariff-filing laws will not necessarily divert more traffic through U.S. east coast ports.

If I may, Mr. Chairman, I have a brief statement here that I would like to just complete, if that is appropriate before they begin.

Senator GORTON. By all means, go ahead.

OPENING STATEMENT BY SENATOR RIEGLE

Senator RIEGLE. I thank you.

Nor it is certain to create new employment at these ports. Instead, it may possibly result in diminished service and higher transportation costs for U.S. exporters and consumers. In addition, concerns regarding our relations with Canada have been raised in conjunction with the legislation.

For Midwestern shippers the landbridge offers an efficient, cost effective transportation system. The distance by landbridge from Detroit to Antwerp, Belgium, for example, is 398 miles less than an all-U.S. route.

Further, shippers on the landbridge need negotiate only once with a landbridge carrier who can provide through service from the point of origin to the port of final destination. The savings can be substantial for both large and small Midwestern manufacturers. Large-volume shippers currently save 10 to 20 percent by using the landbridge. Small shippers enjoy an even greater advantage and can achieve a 20- to 50-percent savings.

It is this cost differential which can give Midwestern shippers the opportunity to penetrate export markets in Europe. This bill may increase transportation costs for these shippers and consequently reduce savings by requiring that landbridge carriers file tariffs with the Federal Maritime Commission.

For example, the significant legal fees involved in filing tariffs and defending challenges to tariffs will be reflected in costs to shippers. Moreover, the inflexibility of FMC tariff filing procedures may cause carriers to raise rates. The FMC allows carriers to lower tariffs almost immediately but requires 30 days notice for rate in-

creases. This upward rigidity in the price structure would eliminate the ability of carriers to respond quickly to changes in the marketplace and would encourage a fixed price structure.

There will be a natural tendency on the part of carriers to build a margin of safety into their prices which will again be seen in higher rates. The resulting increase in transportation costs will substantially reduce the competitive advantage of Midwestern shippers and may eventually diminish the export market. In this way European cargo will not be diverted and may actually be lost entirely.

This reduced traffic would adversely affect total activity and employment in other U.S. ports. The Port of Detroit is recognized as a major gateway for traffic moving to and from Midwestern States through Canadian ports. The port offers efficient barge service from Detroit to Windsor, Ontario, as well as excellent rail and road connections to Canada. In fact, despite economic hard times, and this is important, containerized cargo at the Detroit Port increased 50 percent from 1980 to 1981.

Finally, I am concerned that the extension of extraterritorial jurisdiction by the FMC over port shipments of neighboring countries such as Canada could invite a retaliatory strike. That situation would have serious economic repercusions in the United States because the value of cargo diverted through U.S. west coast ports exceeds that of cargo diverted through Canadian east coast ports.

For example, in 1979 the value of U.S. cargo diverted to Canada was $1,610 per ton versus $3,939 per ton for Canadian cargo shipped through U.S. ports. This translates into $3.4 billion of total U.S. trade via Canada versus $4.2 billion of total Canadian trade via the United States and a net balance in our favor of $800 million.

Mr. Chairman, I urge that the committee closely consider the testimony of these witnesses and explore alternative ways of encouraging equity among North American carriers. I welcome this distingushed panel, and I thank the chairman.

Senator GORTON. Thank you, Senator Riegle.

We will hear I guess from the three interests represented here in order and save our questions for all of you speaking jointly.

We will start with Mr. Mueller.

STATEMENTS OF BERND E. MUELLER, SUPERVISOR, INTERNATIONAL TRANSPORTATION PLANNING SECTION, TRANSPORTATION AND TRAFFIC OFFICE, FORD MOTOR CO.; JOSEPH AUWERS, EXECUTIVE DIRECTOR, DETROIT PORT AUTHORITY; ERIC FORNELL, DEPUTY DIRECTOR, AND ALBERT A. ALMY, DIRECTOR, PUBLIC AFFAIRS, MICHIGAN FARM BUREAU

Mr. MUELLER. Thank you, Mr. Chairman.

My name is Bernd E. Mueller. I am supervisor of international transportation planning for Ford Motor Co. In this capacity my responsibilities include the negotiation of freight rates and selection of routings for Ford shipments moving between North America and Europe.

I would like to direct your attention to a number of concerns which Ford Motor Co. has regarding S. 2414.

These concerns are a direct result of our being a major shipper on the North Atlantic trade route. Our shipments on this trade route move via ports in both Canada and the United States. Our objective in selecting a specific route is to achieve the optimum in both direct freight costs and service.

As you are no doubt aware, Ford has numerous manufacturing facilities in the Midwest, particularly in Michigan. Many of our export and import shipments from and to Michigan facilities are routed via Canadian ports, particularly Montreal, on what is commonly referred to as the Canadian gateway route or also as the Canadian landbridge. Because of this, we view S. 2414 as a threat to the flow of our cargoes.

By extending Federal Maritime Commission jurisdiction over ocean carriers moving U.S. origin or destination cargo through the ports of contiguous nations S. 2414 would require these carriers to file their through rates with the FMC and subject them to U.S. regulatory standards. We disagree that expanding the jurisdiction of U.S. regulation over Canadian gateway carriers reflects a constructive approach.

The supporters of S. 2414 view the Canadian gateway ports, such as Montreal, and the carriers serving them, such as Cast North America, Ltd., a Canadian owned shipping firm, as a source of unfair competition. Perhaps because they are viewed as operating outside of U.S. regulatory jurisdiction, Cast is said to be diverting export/import cargo from U.S. east coast ports through predatory pricing. This diversion of cargo is alleged to represent substantial numbers of lost vessel calls at U.S. ports, lost container motor carrier and rail carrier movements as well as lost waterfront related jobs.

It is the contention of the supporters of the legislation that requiring the carriers to file rates will enable U.S.-based operators and carriers to compete more effectively.

The allegations of predatory pricing, of a lack of knowledge of rate levels being charged by Canadian gateway carriers and of substantial diversions of U.S. cargo by these carriers are not supported by the facts as we understand them.

On the matter of predatory pricing, it is simply not supported by the transportation economics of the situation. Carriers such as Cast North America have built a true intermodal system, one that could well be a model for cargo traffic handling. By specializing on trans-Atlantic movements between two major ports, Antwerp and Montreal, Cast is optimizing vessel operating costs. Between these two ports and shipper and receiver locations Cast has developed an inland transportation system which capitalizes on the relative advantages of rail and motor carriers and is tailored to the shippers' and receivers' needs. Having created the lowest attainable transportation economics through application of state-of-the-art transportation technology and systems, Cast stands as a present-day prime example of free enterprise.

Other economics also favor the Cast plan. For example, as Senator Riegle has just stated, in serving the Michigan exporter Cast moves from Detroit by way of Montreal to Antwerp, Belgium, a distance of 4,324 statute miles. The comparable distance by Baltimore,

a primary U.S. east coast port for Detroit origin cargo, is 4,722 statute miles, or 398 more miles distant.

Cast and other Canadian gateway carriers have built a sound intermodal system, one that does not treat the transportation by water and the transportation by land as unrelated elements. It matches these elements to achieve the greatest economic advantage.

As a major shipper we also do not accept the contention that the ocean carriers serving U.S. east coast ports do not know the rates being charged by such carriers as Cast. We believe that they are aware of the rate levels but are unwilling to meet them.

Therefore, S. 2414 really is not a mechanism to provide public access to Cast rates, but rather a mechanism to harass Canadian carrier interests to raise rates. If the gateway carriers' rates have to be filed with the Federal Maritime Commission they will be subject to attack by U.S. east coast carriers. There will be administrative delays all designed to raise the gateway carriers' rates and reduce their competiveness.

The ability of U.S. companies, such as Ford, to compete both as a seller of domestically-built cars, trucks and tractors and as an exporter of U.S.-made parts and components would be undermined through actions which resulted in increased transportation costs.

On the matter of diversion of cargo and equity for U.S. ports, the committee should know that there is a slight imbalance in Canada's favor for 1980 according to the latest available public documentation. On east coast traffic this added up to 60,899 TEU's, or 20-foot container equivalent units. However, on the west coast the surplus was in favor of U.S. ports totaling 55,523 TEU's. In total, therefore, the overall imbalance was a relatively small 5,376 TEU's in Canada's favor for 1980.

For the entire 1976–80 period, overall imbalance is in the U.S. ports' favor by 28,583 TEU's. It is perhaps ironic, but it was reported in the May 3, 1982, Journal of Commerce that the most recent survey by the Maritime Administration, which provides data through 1980 on U.S. exports moving through Canada, shows that east coast interests through their actions of boycotting U.S.S.R.-destined cargoes were responsible for substantial diversions of cargoes to Canada.

It should also be noted that implementation of the language in S. 2414 could result in resentment by Canadian and Mexican interests. There is a strong possibility of retaliatory action causing the diversion of Canadian-origin or destination cargo from U.S. west coast ports and diversion of Mexican-origin or destination cargo from U.S. gulf coast ports.

Such action would be detrimental to both Canadian and Mexican exporters and importers by increasing their shipping costs. Concurrently, it would reduce the U.S. waterfront and carrier employment. While the U.S. east coast ports might gain, this could be offset by losses on the U.S. west coast and eventually on the U.S. gulf coast, for no net benefit.

Finally, we believe that S. 2414 would reduce the flow of export/import traffic through the port of Detroit which today is a major gateway for traffic moving through Canadian ports from and to Michigan and other States in the Midwest.

Recognizing its geographic advantage, closer distance to Europe, and the fact that the physical limitations of the St. Lawrence Seaway prevent large, efficient container ships from calling at the Great Lakes ports, Detroit has wisely organized itself to participate in Canadian traffic. An efficient barge service across the Detroit River allows the traffic from Detroit to move into Canada at low cost. In addition, Detroit also has excellent rail and road connections to Canada.

In summary, this legislation would: (1) undermine sound transportation economics; (2) raise transportation costs; (3) inspire time consuming regulatory inquiries and investigations at a time when efforts are underway to reduce Government regulatory interference; (4) invite Canadian retaliation; and (5) violate the spirit of the free enterprise system. And with all these disadvantages, S. 2414 is unlikely to bring about a significant net increase in the use of U.S. ports. In fact, the long term effect might be precisely the opposite of what is intended. Accordingly, we believe that S. 2414, like its companion in the House, is an undesirable bill.

Mr. Chairman, this concludes my prepared text.

Senator GORTON. Mr. Auwers.

Mr. AUWERS. Thank you, Senator Gorton.

Senator Gorton and distinguished members of the committee, thank you for the opportunity to give you the views of the Detroit/Wayne County Port Authority on this bill.

There are many reasons why the routing through Canadian ports is attractive to Midwest shippers. It is by far the shortest route. For example, Baltimore frequently advertises that their port is 200 miles closer to the Midwest than other ports on the U.S. east coast. But Baltimore and Detroit are almost equidistant from central Europe when Detroit's shipments move through Montreal. Try it sometime on a globe. If you look at a flat map it may be deceptive.

When inland distances are included, a routing from Detroit to central Europe through Montreal is 300 miles shorter than a routing through Boston or 355 miles shorter than through New York, 550 miles shorter than through Baltimore and 1,094 miles shorter than through Charleston, S.C.

Several times this morning it has been indicated that the traditional routing of this cargo has been through the east coast ports. I would suggest to you that that is not entirely correct. For many years we had any number of small ships coming into the Great Lakes taking this kind of general cargo directly from the Great Lakes ports to Europe. Only since the advent of containerization was some of this cargo diverted to the east coast ports. Then gradually as shippers in the Midwest became aware of the opportunity to ship through the Canadian gateway it was moved back through the St. Lawrence Seaway or along routes parallel to the seaway.

Another reason why manufacturers and farmers in the Midwest find Canadian transshipment attractive is the innovative billing procedure which has been available for more than a decade over the Canadian route. This is the through bill of lading. This feature is of great importance to exporters. Not only does it minimize paperwork, but it also lets an exporter get his money sooner by submitting the through bill of lading with a letter of credit shortly after the shipment is picked up by an inland carrier.

Conflicting regulatory authority in the United States for many years prevented this simple, logical development which should have occurred simultaneously with introduction of intermodal containers.

In the North Atlantic trade routes there currently are more ships than are needed. Several of the carriers serving Canadian ports are coping with this overcapacity by placing their containers on one another's vessels. This lets the lines offer more frequent service and reduces the amount of excess capacity. Under U.S. regulation before such a procedure can be adopted extensive hearings must be held and long delays are encountered.

Slow acceptance of through bills and cumbersome procedures that impede change are but a couple of examples of the unfavorable effects of regulation by the Federal Maritime Commission, but they indicate why the lines offering service via Canadian ports and industrial and agricultural interests throughout America's heartland which use those services want to avoid this kind of regulation.

Proponents of S. 2414 have alleged that lines serving U.S. ports do not know what they are competing against. Their charge is not completely correct, as indicated by many newspaper articles quoting comments by East Coast Port Authority personnel about rate differentials. They were remarkably accurate when they were citing specific Canadian rates. Rate information really is not very difficult to determine.

We in the Midwest, however, would have no particular problem with the requirement that the rates be published, but not filed and subject to regulatory approval. Published rates should not be subject to challenge. Defending against challenges can be very expensive.

A competitive marketplace can replace the Federal Maritime Commission in insuring that rates are neither too high nor too low. Instead of imposing a regulatory burden on the progressive and competitive carriers going across Canada, we respectfully suggest that the distinguished gentlemen of the Senate consider freeing up the U.S. carriers so that they, too, can compete. We understand that this compromise on the publication of tariffs is supported by the Council of Economic Advisers and the Departments of Justice, Commerce and State.

S. 2414 would, we believe, raise costs for the carriers who use Canada and therefore would decrease the competitiveness of their service. Increased costs would be generated by legal fees necessary to defend against challenges to tariffs and by the need carriers would have to build a margin of safety into their rates. The Federal Maritime Commission currently requires 30 days notice for a rate increase. If a company knows that it will be stuck with its rates for 30 days, even if economic conditions change, it will build in a margin of safety on those rates. It will also be less likely to risk the introduction of low volume generating rates.

I would call to your attention that recently when Cast got into some financial difficulty they raised their rates. They didn't have to wait 30 days to do it, and it is possible that was the salvation of the company.

Realistically it is unlikely that many shipments will be diverted to U.S. ports even if this legislation is enacted. Costs will be lower

via Canada for a number of reasons. As previously indicated, the routing is shorter via Canada.

Cast Line will be taking delivery of six new combination ships which are said to be very efficient and will carry 40,000 tons of bulk cargo as well as 1,450 20-foot containers. Three of the other lines have placed larger and more efficient vessels in service in the past few months. All of them are operating as nonconference lines.

By contrast, almost all of the lines serving U.S. ports are conference members. It is commonly said that their cartel-like rates are set high enough to cover the costs of the least efficient member. While this is not strictly true, conference rates do tend to be higher than rates of independent lines.

If I understood the prior testimony correctly, the North American ports indicated that they had lost 5,000 longshoremen jobs. The Port of Philadelphia said that they had lost 1,025 longshoremen jobs. Mr. Gleason indicated that Cast Lines is as using only 165 longshoremen and he thought perhaps that figure was a bit too high. Cast carries about a third of the volume moving through the Canadian ports. If we extend their 165 longshoremen, they would be using about 500 longshoremen in Montreal, which is one-tenth of the number that the North American ports say that they have lost. That also is a cost comparison. Consequently, the ports and lines which are advocating passage of this bill probably will not secure much additional tonnage because the rates via Canada will continue to be lower.

However, the increase in rates via Canada which will result from U.S. reglation may very well be enough to make some exporters in America's heartland noncompetitive.

We must remember that we have a lot of workers in the United States dependent upon exports. Most of them are not working in the ports. They are working in factories. Far more Americans have jobs in manufacturing and agriculture which rely on exports and imports than have jobs in the ports or on U.S.-flag vessels. Efforts are being made by industry to reduce their costs on many fronts with concessions by labor, streamlining of management and the improvements in technology.

We urge you not to take any steps which increase costs for such exporters. As Senator Riegle pointed out on another occasion, Michigan already has more people unemployed than live in the city of Boston. We don't need any more.

Thank you for your very kind attention.

[The following information was subsequently received for the record:]

DETROIT/WAYNE COUNTY PORT AUTHORITY,
May 27, 1982.

Hon. DANIEL K. INOUYE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR INOUYE: Your questioning in the hearing on S. 2414 was thoughtful and probing. It was greatly appreciated. Upon reflection, however, we are not sure that our support of a viable U.S. merchant marine was expressed adequately. Britain's current experience in the Falkland Islands makes the defense argument very clear.

However, we do not believe that American importers and exporters can be made solely or primarily responsible for the financial burden of maintaining an American marine. Exporters are competing in world markets.

Increased shipping costs from the U.S. will make them less competitive. And if they cannot sell abroad, not only will factory employment in the U.S. fall, but the merchant marine cannot be supported.

Subsidies have been necessary to offset excess costs of American shipping lines resulting from legislative protection of many special interests groups, but despite these subsidies, as you indicated, American vessels now carry less than 50 percent of our foreign commerce. The underlying cause is economic—costs of American shipping companies even after receiving subsidies are higher than costs of their competitors. In our opinion, legislation is required which will eliminate their costly burdens, unpopular though this may with those special interest groups. If American lines can reduce their costs and become competitive, cargo preference laws will be unnecessary.

The bill on which we were testifying, S. 2414, and its companion bill in the House have been the subject of much rhetoric which tends to confuse the issue. Basically, it was the contention of several port authorities on the east coast that lines serving their ports (mostly foreign flag lines and members of the North Atlantic/Continental Feight Conference) did not know what rates Cast Line was charging because the rates are not filed. As a compromise, we suggest that all lines, including those which transship via canada, be required to simply publish a price list. If information on rates is all the U.S. lines and ports need, this should suffice. The bill before the Senate, S. 2414, will not specifially help the American merchant marine, since the great majority of cargo from U.S. ports to Europe travels on foreign vessels.

Thank you very much for your patient and thoughtful consideration of our views. You helped give opponents of S. 2414 a fair hearing, and we are most grateful.

Respectfully yours,

JOSEPH T. AUWERS, *Executive Director.*
ERIC O. FORNELL, *Deputy Director.*

Mr. ALMY. Thank you very much, Mr. Chairman and distinguished members of the subcommittee.

I would like to express appreciation for the opportunity to present the views of the Michigan Farm Bureau in opposition to S. 2414.

For purpose of brevity and to avoid duplication of many of the comments that have already been made, I would like to paraphrase my statement.

First of all, Michigan Farm Bureau is a voluntary, nongovernmental, general farm organization of farm families, presently representing over 73,000 farm families who produce a wide variety of agricultural commodities.

Michigan farmers produce over 50 commercial food products in the State making Michigan the Nation's second most diversified in agricultural production. We lead the Nation in the production of five crops and rank fifth or higher in 24 others.

Agriculture presently is the No. 1 economic segment of the State of Michigan. Given the decline in the automobile industry, agriculture is now No. 1. it is a growth industry, one of the few in the State growing at the rate of 10 percent or greater each year over the past several years.

Over 20 percent of Michigan's total agricultural production is exported, representing well over $1 billion in economic activity. The fact that our State is bordered on three sides by the Great Lakes, the fact that those lakes are connected to the St. Lawrence Seaway, the very excellent administration and export promotion of the Detroit Port Authority and our ready access to Canadian ports offers even greater export opportunities for Michigan.

By way of example, just to illustrate the impact that we perceive this legislation would have on Michigan agriculture, I would like to pick out one of the leading commodities that we produce in Michigan which is navy beans. We are the leading grower in the Nation

producing about 75 percent of all of the navy beans that are grown in the United States.

Through technology, a system of intermodal transportation with very tremendous efficiency has been developed which greatly enhances the ability to export navy beans. This is the containerized system. It consists basically of a steel container 20 feet long, 8 feet wide, and 8 feet high. In terms of beans these containers hold 40,000 pounds.

The beans are placed in the containers at the terminal elevator. They are then transported generally by truck to the Port of Detroit, placed aboard barges, taken across the Detroit River for connection with the Canadian transportation system and moved to Montreal's container port. The service is excellent, the rates are highly competitive, the transit time is very quick and oftentimes it is the most direct route to the final foreign destination. All of these factors are very important in the efficient export of agricultural commodities.

We believe that if S. 2414 is enacted there will be a gradual diversion of exports from Canadian ports to east coast ports. Our export manager of the Michigan Elevator Exchange has contacted Dart Steamship Co., and asked them to quote the rates for the export of Michigan beans from the Saginaw terminal of the Michigan Elevator Exchange to Felixstone, England, via both Baltimore and the Port of Montreal.

The difference is $3.08 per hundredweight greater by using the east coast port, and when we translate that difference into the nearly 2 million hundredweight of navy beans that Michigan exports we are talking about a difference of $6.1 million. In terms of who would pay the cost of that $6.1 million, it would be the farmers of the State of Michigan because the terminal elevator in estimating its cost of supplying this export market would recoup the cost from the prices that it paid to the producer. This example for navy beans applies to other Michigan and Midwest agricultural commodities that are destined to containerized export via Canadian ports.

Transportation of agricultural commodities is a major factor in whether or not a given production area such as Michigan can compete in world markets. We believe that the individual farmers and the 25 to 30 percent of the nonfarm population that derives a significant portion of their income from agricultural production activities would be adversely affected.

We believe that S. 2414 addresses the problems at the east coast ports by reducing the efficiency of export movement through Canadian ports rather than improving the efficiency through deregulation of east coast ports.

I am pleased to have this opportunity to present our views. We are very concerned about the impact of S. 2414 and would hope that this committee would consider the impacts very seriously.

Thank you very much.

[The statement follows:]

STATEMENT OF ALBERT A. ALMY, DIRECTOR, PUBLIC AFFAIRS DIVISION, MICHIGAN FARM BUREAU

The Michigan Farm Bureau is a voluntary, non-governmental, general farm organization. The organization currently represents over 73,000 families who produce a wide variety of agricultural commodities.

At the Annual Meeting of the American Farm Bureau Federation in January, 1982, voting delegates unanimously adopted a policy submitted by the Michigan Farm Bureau delegates which reads:

"We oppose legislation that would increase regulation of the movement of U.S. agricultural commodities to Canadian ports for overseas shipment."

I appreciate the opportunity to appear before this Subcommittee on Merchant Marine and explain Michigan Farm Bureau's opposition to S. 2414.

Michigan farmers produce over 50 commercial food crops each year making Michigan the nation's second most diversified state in agricultural production. Michigan leads the nation in the production of five crops—dry edible beans, blueberries, red tart cherries, pickling cucumbers and eastern soft white winter wheat—and ranks 5th or higher in 24 crops.

Over 20 percent of Michigan's agricultural production is exported representing over $1 billion. Feedgrains, wheat, soybeans, dry edible beans, fruits and vegetables are the leading commodities exported. The fact that Michigan is bordered on three sides by the Great Lakes and their connection to the St. Lawrence Seaway, the excellent administration and export promotion activities of the Detroit Port Authority and easy access to Canadian ports offers even greater export opportunities. However, the enactment of S. 2414 would be a major deterrent in further growth of exports from Michigan.

The export of navy beans is a good example. Through technology a system of intermodal transportation with tremendous efficiency has been developed which greatly enhances the export of navy beans. The container is constructed of steel and measures 20 feet long, 8 feet wide, and 8 feet high. Each container holds 40,000 pounds of beans. Beans are placed in the containers at the elevator terminal and trucked to the Port of Detroit where they are placed aboard barges. The barges transport the containers across the Detroit River to Canadian railroads at Windsor for movement to Montreal's container port. Service is excellent, rates are competitive, transportation time is quick and it is the most direct route to the final foreign destination.

If the export of navy beans is restricted through Canadian ports, the alternate route would be by truck or rail from Michigan to East Coast ports for loading on ships bound to the foreign destination. Additional transportation time to East Coast ports would be used, additional manhours to monitor the movement and filing of tariffs would be required, and additional distance and time would be required aboard the vessel before delivery to the foreign destination.

Using the same ocean carrier, DART Steamship Company, the transportation cost of exporting navy beans from the Michigan Elevator Exchange Terminal at Saginaw, Michigan, to the port of Felixstowe, England, via Baltimore is $7.63 per cwt. as compared to $4.55 per cwt. via Canada. When applied to the nearly 2 million cwt. of navy beans exported annually, the $3.08 per cwt. difference amounts to $6.1 million. The $6.1 million would come out of prices paid to navy bean growers and constitutes a tremendous economic loss to them.

The above example for navy beans applies to other Michigan and Midwest agricultural commodities destined for containerized export via Canadian ports. Other commodities exported through Canadian ports include canned cherries, popcorn and soy flour to mention a few and their freight rates will vary slightly.

If S. 2414 is enacted the impact on Michigan agriculture would be especially bad. Again, using navy beans as an example, 35 percent of the beans produced in Michigan are exported. Nearly 75 percent of all navy beans grown in the United States are grown in Michigan. Nearly $41.6 million is generated just at the farm level from this export activity alone. If exports are reduced or lost the economic impact will be quickly felt. At a time when increased exports are badly needed to help the depressed agricultural economy it would be counterproductive to approve S. 2414.

Transportation of agricultural commodities is a major factor in whether or not a given production area can compete in world markets. The individual farmers and the remaining 25 to 30 percent of the population that derives all or some portion of their income from activities—transportation, processing, marketing, retailing, etc.—resulting from agricultural production will be adversely affected if exports are limited. Michigan Farm Bureau believes S. 2414 addresses the problem of East Coast port problems by reducing the efficiency of export movement through Canadian

ports by increased regulation rather than improving the efficiency of East Coast ports through deregulation.

Michigan Farm Bureau is pleased to have this opportunity to present its views with regard to S. 2414 and the cripping impact it would have on Michigan agriculture. In our opinion the diversion of Michigan exports from Canadian ports resulting from passage of S. 2414 would be serious to not only agriculture but also to the City of Detroit and the overall economy of the State of Michigan.

Thank you for your consideration to our views.

Senator GORTON. Mr. Mueller, the first is question for you. Does Ford Motor Co. now receive lower rates than other smaller U.S. exporters using the same carrier serving Montreal?

Mr. MUELLER. Senator, I am not aware of us receiving concessionary rates on the basis of us being Ford Motor Co. I think we receive rates that are competitive based on the cargo and the volume that we offer.

Senator GORTON. This one any of you can answer. How would the passage of S. 1593 affect your views of S. 2414? Obviously, under S. 1593, there would be less opportunity for harassment or protest by carriers serving U.S. ports against whatever rates were submitted by competing carriers through Montreal. Would S. 1593 significantly affect your views on this legislation?

Mr. MUELLER. Senator, from what I am familiar with, I believe that the objectives of S. 1593 would meet some of the needs that east coast carriers and operators have need of in order to become more competitive with the Canadian-based companies.

Senator GORTON. Well, I understand that. My question goes a little bit beyond that. Because it would remove much of the ability carriers have now to protest rates submitted by other carriers, would the passage of S. 1593 lessen your objections to S. 2414 because of the far smaller jurisdiction which the FMC would have over rates?

Mr. AUWERS. Let me say that it would help, sir. We see that the expense of fighting a challenge would be very significant. Under the current Shipping Act of 1916 and the kinds of challenges that they might be subjected to, it would not be at all out of the realm of possibility that the various carriers would incur legal costs of a million dollars or more and this might increase the cost per container by, say, $20 a container.

Senator GORTON. And that is one of your points.

Mr. AUWERS. This is one of our points. As I understand the Shipping Act of 1982, they would not now be able to challenge in the same way that they do under current legislation.

Senator GORTON. That is correct.

Mr. AUWERS. And this would be an improvement. We think the shippers would benefit to that extent, yes, sir.

Senator GORTON. Do either of the others wish to comment?

Mr. MUELLER. I concur with that.

Senator GORTON. Senator Kasten has asked me to ask a question on his behalf of you, Mr. Auwers. Do other Great Lakes ports such as Milwaukee, Chicago, and Toledo take the same view of this bill as does the Port of Detroit?

Mr. AUWERS. No, they do not, sir.

Senator GORTON. Can you account for that difference?

Mr. AUWERS. Yes. They are not geographically situated in the same way that Detroit is.

Senator GORTON. Toledo has practically the same.

Mr. AUWERS. Toledo doesn't have very much foreign commerce. Most of Toledo's commerce is domestic.

Senator GORTON. Go ahead.

Mr. AUWERS. In Detroit we can put cargo on barges, move them across to Windsor to the railhead in Canada and it moves to Montreal by rail. Most of the other ports in the Great Lakes see their cargo currently moving by rail all the way and they have no port involvement whatsoever. I think that this is the major difference. They are very interested in trying to promote some kind of port activity. Most of those ports have invested very heavily in container facilities which are currently standing idle. We do not have this situation in Detroit.

They would like to see small feeder ships coming in. I think what they would like to see is to turn the clock backward to have all these small ships coming in and picking up general cargo in the way that they did a decade or more ago. We do not see this as happening because it is far more economical to move containers on the very large efficient container ships which can only come into the deepwater ports on the east coast, including Montreal. The other ports are working very hard to get small feeder ships that can serve the Port of Montreal in the same way that Detroit is currently being served by the Canadian rail network.

Senator GORTON. Thank you.

Senator Inouye.

Senator INOUYE. Thank you very much.

Will the enactment of this bill, together with the enactment of S. 1593 prohibit any one of you from shipping via Canada?

Mr. MUELLER. No, sir.

Mr. AUWERS. I would agree; no, sir, it would not, but it still might increase our costs.

Senator INOUYE. Will it deny the shipper the benefits of shorter delivery distances?

Mr. AUWERS. No, sir.

Senator INOUYE. Will it deny the shipper the benefts of lower handling costs like stevedoring?

Mr. AUWERS. These are the reasons why we think this bill is not going to be effective in diverting cargo back to the U.S. east coast. All it is going to do is increase the costs to the shipper.

Senator INOUYE. How will it increase the costs to the shipper? People have suggested that the mere tariff filing somehow magically raises the cost. How does it do that?

Mr. FORNELL. In two ways. If you file tariffs with the Federal Maritime Commission you can be subject to challenges by other carriers that the rates that you have filed are, I believe the phrase is, detrimental to the commerce of the United States. You might have to defend your tariffs against charges that they are either too high or too low.

There is an example recently in another industry, in the trucking industry. There was an article in the Wall Street Journal, I believe on Friday, May 21, 1982, where TransCon Co. had offered to cut their rates by, I believe, 20 percent. The other carriers complained and they agreed to cut their rates only by 12 percent instead.

So in order to avoid the problems of fighting a defense against lower tariffs, here is an example in another industry where people decided just to raise their tariffs. We think that will happen in the shipping industry.

The other part of the problem is the 30-day requirement required by the Federal Maritime Commission for the raising of rates. We believe that if you will be stuck with rates for 30 days you will build a margin of safety into your rates that will be a little higher than they would otherwise because economic conditions can change.

The example that Mr. Auwers gave in his testimony of Cast suddenly raising their rates because they were pushed to the limit for a number of cash flow problems basically is an example of the need to do away with that inflexibility and we think that is a significant cost.

Mr. AUWERS. May I also respond, Senator. The Shipping Act of 1982 addresses some of the problems that have arisen in the past such as the intermodal rates and volume discounts and things of this sort. These were prohibited under the regulation by the Federal Maritime Commission for a long, long, long time while they investigated. We don't know what innovations are going to be coming along in future years which have not been addressed by the Shipping Act. It is entirely possible that some of the things which could be put into practice immediately in Canada would not be accepted for filing by the Federal Maritime Commission under the Shipping Act.

Senator INOUYE. My question assumed enactment of this bill and S. 1593. As you know, in S. 1593 section 18(b)(5) is no longer. The section which you quoted, so "unreasonably low as to be detrimental to the commerce of the United States" is out. But even assuming that the provision remains, isn't it true that in the two decades during which time this provision has been in effect the FMC has never turned down a rate being too low?

Mr. CORNELL. I can't answer that.

Senator INOUYE. Well, that happens to be true. It has never turned down a rate under this provision. The FMC has jurisdiction over illegal rebating. Would you be in favor of illegal rebating?

Mr. AUWERS. To the best of my knowledge, Senator, Manchester Liners, CP Ships, and Cast Line have never been accused of illegal rebating, but the lines who are serving the U.S. ports, most of them have paid very severe penalties for rebating.

I think this is not the result of the morality of the companies, but rather indicates that rebating is the result of regulation and lack of flexibility in fixing rates, because they are in a conference system and the conference sets the rates and they find that some other member of the conference is cutting rates for specific customers. An American shipping line, for example, has to rebate too or they are going to lose all of their business. This, as I understand it, is the reason that we got into the rebating situation. When you have a completely flexible non-regulated rate system, you are not going to have illegal rebating.

Senator INOUYE. Will this deny the shipper the benefits of through bill of lading?

Mr. AUWERS. No, sir, it will not, particularly if S. 1593 is passed, because I understand that S. 1593 permits intermodal rates. But in the past, and I submit this as an example of the way that the Federal Maritime regulation has hindered shippers from getting the lowest possible rates, the Federal Maritime Commission and the Interstate Commerce Commission battled over jurisdiction of intermodal rates for many, many years and would not permit them.

Now I don't know what innovations are coming along in the future, but recent history has indicated that we are not fast enough with our regulatory changes to meet the rapidly changing conditions in international trade. Technology is ahead of our regulations.

Senator INOUYE. During the consideration of S. 1593 the committee retained tariff filing and the adherence requirements of the Shipping Act. If I recall, Ford Motor Company supported this. Is that correct?

Mr. MUELLER. Senator, I believe we were a part of a carrier/shipper consensus panel and that was one of the results of the compromise and we do accept it.

Senator INOUYE. But now you are changing your mind? You are against it?

Mr. MUELLER. We are not against the publication of tariffs, Senator. We do oppose the filing and the investigation of rates. However, as part of the compromise panel on S. 1593 we accepted the filing of tariffs as part of their compromise solution.

Senator INOUYE. You accepted it for S. 1593 but you don't wish to accept it now?

Mr. MUELLER. We accepted it as a compromise solution in order to reach a degree of consensus between competing carrier and shipper interests.

Senator INOUYE. Mr. Chairman, I believe the issue involved here is a rather profound one. It goes beyond costs, labor, or port authority costs. I think the issue involved here is free enterprise and regulation or deregulation. I think most of those who are opposed to S. 2414 have spoken loudly of the benefits of deregulation and the benefits that we may enjoy as a result of free enterprise. I believe the record will indicate that of all the nations in the world we are closer to true free enterprise than any other country.

Now following your desire for free enterprise would you then support a repeal of cargo preference laws?

Mr. FORNELL. Being the youngest here on the panel I probably have the least to lose.

I would say that I certainly would. I think that the U.S. Merchant Marine has a very important role to play. I feel that by the example in Great Britain of the role of the British Merchant Marine in the Falkland Islands crisis shows the importance for our entire Nation of maintaining the Merchant Marine.

I think, however, that that is a benefit that extends to everyone and not just to importers and exporters, and that if we sincerely believe that the Merchant Marine is essential to our national defense it should be in a defense budget and that the subsidies for the Merchant Marine, if it is necessary to subsidize it, should come through the defense budget rather than asking importers and ex-

porters to bear the cost of a defense program that everyone in the entire Nation benefits from.

Senator INOUYE. Are you in favor of repealing the cargo-preference laws?

Mr. FORNELL. Yes, but I speak on behalf of myself as a person who has analyzed the shipping industry to some extent, but I can't really speak on behalf of the Detroit/Wayne County Port Authority.

Senator INOUYE. I am certain that you are aware that all other countries have much more severe cargo preference laws.

Mr. FORNELL. They do.

Senator INOUYE. All other countries.

Mr. FORNELL. American has been brave enough to stand alone before.

Senator INOUYE. Even if it means that today we carry less than 5 percent of our foreign commerce?

Mr. FORNELL. Perhaps there are problems with costs that ought to be addressed or if we would like to we could still make it possible for the U.S. Merchant Marine to carry a larger percentage of our cargoes if we were able to bring down their costs, say, through giving direct subsidies from the defense budget.

Senator INOUYE. How about protected markets? Strong suggestions are made today that the automobile market should be protected. Are you in favor of that?

Mr. FORNELL. I would wonder what kind of protection would be asked for. There are a number of proposals, everything from U. S. content proposals to import restrictions.

Senator INOUYE. Any type.

Mr. FORNELL. I think that there could be a good case made for the fact that the U.S. Government over a period of time in the 1970's kept the price of gasoline in the United States artificially low, and through that Government action sent improper market signals to the American automobile industry, and suddenly the prices reached a level where people began to respond. There may be a case to be made that because of that Government interference in the energy price that there ought to be a period of Government involvement in the protection of the auto industry to allow them to invest and make the investments that they are making so that they then again can compete on the world market.

As I understand it, one of the problems with shipping is well evidenced by what has happened to the automobile market in Hawaii. The 1916 Shipping Act requires U.S.-flag carriers to go between U.S. points. I am not quite sure what the statistics are, but I believe that the Japanese have been able to capture a greater percentage of the Hawaiian automobile market than they have in other parts of the United States largely because of the costs to U.S. manufacturers of shipping from U.S. port to U.S. port.

Senator INOUYE. I remember presiding at a hearing similar to this where the top officials of the major automobile companies were sitting as a panel. It wasn't in this room but was in another room. At that time we were discussing the matter of pollution and the insistence on the part of the Government that cars be manufactured with the installation of these antipolluting devices.

I asked the question, and in fact I recall almost exactly what I said. I said:

> Now this question may sound naive, but I would like to ask you if the Swedes can do it, the Japanese can do it and the Germans and the French and the British can do it, building small cars, gas efficient cars at lower cost at a time when all experts tell us that fossil fuel is on its way out, why don't you people in Detroit do likewise?

They all looked at each other and the General Motors man said I will answer that. He said, Mr. Chairman, obviously, you don't know the business. I said I don't. He said we know that the American consumer wants big cars, heavy cars, comfortable cars, air conditioned and power equipped. They don't want small cars. As long as they want those big ones, that is what we will give them. We can let the Germans and the Japanese handle the small cars. We have got problems today.

I supported the Chrysler bailout. Did I do wrong?

Senator RIEGLE. I don't think so.

Senator INOUYE. I am talking about free enterprise now.

Mr. AUWERS. Mr. Fornell made the point a moment ago about free enterprise. In protecting the maritime industry under the Jones Act we have required that American automobiles be shipped to Hawaii on American-flag vessels. The cost of doing so is very, very high. As a consequence of protecting the maritime industry and the jobs in that industry we now have Japanese cars almost exclusively in Hawaii and the same thing is beginning to be true in Puerto Rico and we are losing a lot more jobs in the auto industry than we are saving in the maritime industry. The same thing is going to be true if it isn't already of most other appliances. Anything that has a significant shipping cost, we cannot compete in the offshore States and Commonwealths.

Senator INOUYE. Just as a closing remark, Mr. Chairman, I am old enough to recall that at one time soon after World War II we ruled the seven seas. If anybody wanted to ship anything to any port from anywhere, the changes are you would have to ship it on an American bottom. The British had no ships, the Russians had none, the Germans had none, and the Japanese had everything on the bottom of the Pacific.

Today we carry less than 4 percent of our cargo. During the Yom Kippur War when it became apparent that we had to urgently resupply the Israelis with war materiel, we looked to our merchant marine and low and behold we couldn't find any ships available at that time. So we called upon American citizens, owners of ships foreign registry. We asked them to come to our aid to carry cargo which was sorely needed at that time by our ally, the Israelis.

The Arab world sent a message to the countries that had these ships under register and said that carrying cargo to Israel would constitute an infriendly act and the vessel owners would have to suffer the consequences. As a result, no ships responded to our pleas, and we had to carry cargo on C-5A's and other military transports.

It may interest you to know that during the transport of materiel from the United States to Israel on these huge cargo planes a couple of them got buzzed by Egyptian Migs, and it is just by luck that these cargo planes were not shot down. I shudder to think what would have happened if they were.

So I think we have got a choice to make. Do we pay an extra cost to support our merchant marine. I felt we should pay the extra cost to support Chrysler because if Chrysler went down it meant more than workers in Detroit. The same thing with Ford, I think I would go out and support Ford if a bailout is necessary.

But if you think that a merchant marine is not necessary, then let's make that the policy of the United States and let's not waste our time. I happen to think that it is necessary. We have at this present time one passenger ship in operation that we could call upon if we got involved in a Falkland-type situation. There is a second one coming on line as a result of action taken by this committee.

Thank you.

Senator GORTON. Senator Riegle.

Senator RIEGLE. Thank you, Mr. Chairman.

This has been a very illuminating discussion. I want to say to the panelists from Michigan that they have spoken very well, both in terms of their testimony and in their response to the colloquy and the questions.

Senator Inouye, I join you in saying that the country needs a strong merchant marine. I think that is sound and very much in the national interest. It is something that I support, and I am prepared, as I have over a long period of years, to provide money and legislative initiatives for a strong merchant marine because I don't think that we can afford to be caught short in that area.

I share the apprehension of the Senator from Hawaii regarding the reduction in size of our merchant marine and I feel that leaves us in quite a vulnerable position I would like to see us address that problem.

But as has been said by the panel itself, I feel that is a strategic question for the country and is very directly a defense issue. In fact, even the illustration of the problems we faced in the Yom Kippur War show that we are talking about contingencies that arise with respect to defense requirements and defense obligations.

I believe that we spend too much money in the defense budget on the wrong things. We have a surplus of nuclear weapons, as I am sure is well known. We have 9,000 large warheads now and 15,000 small ones. To destroy the Soviet Union completely we would need maybe 200 of the 9,000 big ones. In the budget that is before the Congress right now we are proposing, or I should say the Reagan administration is proposing, to build 17,000 more nuclear warheads.

If some of that money were properly invested in reestablishing the merchant marine of this country we would come out way ahead. Unfortunately, that is not the predisposition.

In the case of inland producers and in a State like Michigan, which is rather unusually situated because of its location on the Great Lakes and with the Seaway, we are able to begin to compete in world markets on an efficient basis. Whereas, if we did not have this ability to move our products out of the Michigan area and into the world market the way we presently can, we would lose much of our competitive advantage. We would find ourselves in a situation where those cost premiums, if that advantage were taken away, would be added on and it would substantially reduce our ability to

compete in those foreign markets. When we do compete successfully it obviously helps the State, but more importantly it helps the country.

Can any of you give for the record what our balance of payments balance would be right now for Michigan as an exporter versus an importer of goods? Do you have a rough value of that?

[Panel nodding in the negative.]

Senator RIEGLE. Well, from memory, my recall would be that we are near the very top of States in the United States in terms of our export strength. In fact, we helped diminish the balance of payments deficit because we are a very substantial net exporter of a variety of goods ranging from agricultural products, which have experienced a rising penetration in foreign markets due to the aggressive work which has been done to develop that trade, to manufactured goods of which we also are a substantial exporter.

So, in terms of increasing America's net economic strength in this increasingly competitive world market situation, the ability of the Upper Midwest to pursue aggressively and to win world markets and to move our products out has been a great gain for the country and for the State of Michigan despite our economic difficulties.

It seems to me that it is very important that we insure that we not lose that gain. I don't think that gain sits crosswise with the need for a strong and adequate American merchant marine nor do I believe that those need to be conflicting purposes. They are dual purposes, both of which need to be achieved and it takes the genius of policy to decide how we can accomplish both of those goals.

I am prepared to support an aggressive strategy with the Senator from Hawaii and others with respect to the merchant marine strength in the United States. I am as apprehensive about it as he and I would like to see a more aggressive policy. But, at the same time, I think we have to take such established realities as we have now with our port situation and make sure that that isn't somehow damaged or lost. I view that as a national advantage which doesn't just accrue to Michigan, but accrues to the country as a whole and therefore, should not be lost, especially when we are finding ourselves heavily pressed by foreign competition.

To the question that was raised earlier about whether or not we have open access to markets and whether our automobile market is protected here in the United States, clearly it has not been protected. We have maintained an open market here to our great disadvantage over a period of time.

We have a situation now where imported cars from abroad are about 30 percent of the total market with the Japanese taking about 23 of those 30 percentage points. As a result, we have massive unemployment in the heavy industry sector of our economy which has contributed very substantially to the recession. But while we don't have market protection here in the United States, there is profound market protection in every other market in the world. There is no other open market for automobiles anywhere other than the United States. The worst example happens to be the most successful importer here in the United States of cars, namely, Japan.

Japan has devised a system whereby they have very skillfully closed their market to American cars retaining the advantage of an open access to our market. Further, the Japanese use a dual-price system on their cars. If you want to buy a Toyota here in the United States it costs you must less than if you want to buy the same Toyota in Japan.

This is a classic two-tier pricing system where by the internal market is restricted and forces the Japanese buyers into car buying habits at much higher prices, contributing enough money toward the total manufacturing cost so that those extra cars produced in foreign markets, that is, the United States, can be offered at a much lower price.

But we are a little off our point here, except that we are living in a situation today where there are no free markets. I know of none on a worldwide basis especially with respect to issues that relate to the national economic infrastructure, whether it be airlines, shipping, automobile production, or steel production.

Rather than finding ourselves in a situation where we have to pit the auto industry against the merchant marine, I think we need to strengthen both the auto industry and the merchant marine.

So I would hope that we could find a way to do that because I am as interested in responding constructively to the problem of the merchant marine as I am in responding constructively to the problem of the auto industry and the steel industry. We need them all. We are not going to do well in the end if we have one and not the other.

The trick here is to figure out how to get them both when we are facing foreign competitors that are very skillful and that have had to make themselves more efficient and have learned to respond to adversity with a tremendous capacity, creativity and ingenuity and some sharp bargaining. We have not done that nearly to the same extent in this country. We have been slow to respond.

I might just say one other thing. The issue was raised about the production of small fuel efficient cars and that has been a problem in this country. But I would say one thing to my colleague from Hawaii whom I admire as much as anyone in the Senate since it is always just a pleasure to listen to him talk about an issue and to cross-examine because he is so skillful and so able.

I must say with respect to the car situation that we have been shifting our production now very heavily to the production of small cars and now we are on line producing a high percentage of small cars. And what has happened? The price of gasoline leveled off, began to drop and all of the sudden customer preferences began to shift again and the cars that are on back order for many of the manufacturers are the larger cars that are more luxurious, roomier, heavier, and less fuel efficient.

All of the sudden we may find ourselves in a situation where, because of Government policy or the absence of Government policy on energy supply and energy costs and because these prices shift up and down and the customer preferences reflect a corresponding change, we may have repositioned to build smaller cars which are no longer wanted. So you can't afford to have as many cars of every size as the market might in its own way decide it wants.

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We are in a tight squeeze here, and I would hope that as we go down the line we could develop an approach that would not handicap or take away the advantage that we have developed and that it works for our region and to the benefit of the country. We don't injure the country in any way by the approach that we use that is adapted to our circumstances. I think we contribute a net gain and I think we can measure that in economic terms.

Thus, in responding to other problems we want to make sure that we don't lose that gain. The effort has to be made to try to accomplish these different goals simultaneously and not one at the expense of another. That will be the approach that I take and I hope we can have some success with that.

I thank the panel very much for its testimony and I thank the chairman.

Senator GORTON. I thank the panel as well. We appreciate your coming here and we appreciate your testimony.

Because of the very late hour and the fact that we have three more witnesses, we will ask Mr. Wigen, Mr. Derome, and Mr. Finnerty all to come up here together, even though they will report to us their somewhat diverse views.

What we will do is ask each of you to give his formal testimony first and then ask questions. Given the late hour, if you can summarize your written testimony it would be greatly appreciated. We can assure you, and we can most especially assure Mr. Derome, that your entire testimony will be a part of the record and will be given attention.

So, we will start with Mr. Wigen.

STATEMENTS OF ROGER WIGEN, VICE CHAIRMAN, WATER FREIGHT TRANSPORTATION, MARITIME COMMITTEE, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE; PETER FINNERTY, VICE PRESIDENT, PUBLIC AFFAIRS, SEA-LAND INDUSTRIES; AND LOUIS DEROME, SECRETARY AND VICE PRESIDENT OF GOVERNMENT AFFAIRS, CAST NORTH AMERICA, LTD., MONTREAL, QUEBEC, CANADA, ACCOMPANIED BY RICHARD H. STREETER, COUNSEL

Mr. WIGEN. Mr. Chairman and members of the subcommittee, my name is Roger Wigen. I am a vice chairman of the water freight transportation-maritime committee of the National Industrial Traffic League, and transportation manager, intermodal and maritime, for 3M Co., St. Paul, Minn.

I will keep my statement brief since some of our opposition to S. 2414 had been stated in other testimony. The league opposes this legislation for several reasons. Underlining our reasons is the belief in the need for a minimum amount of Federal regulation consistent with the public interest so that the natural forces of a free marketplace can function effectively. We believe that these market forces are sufficiently strong to regulate and balance the needs of carriers, shippers, and the public.

From a shipper's perspective the decision to route traffic is based on two primary considerations, service and cost. Routing through Canadian ports offers inland U.S. shippers several advantages. Among them are advanced intermodal service techniques at more

competitive rates, the use of 20-foot containers, service contracts, faster transit times, lower port handling costs, and protection against U.S. service interruptions.

Canada allows its carriers to more effectively market intermodal service. The economies that result from this approach are evident not only in reduced operating costs for the carrier and lower transportation costs for the shipper, but also in terms of a reduced administrative time and cost for each. Based on these intermodal efficiencies Canadian carriers are able to offer more competitive rates.

Canadian carriers also have encouraged the use of 20-foot containers. Two advantages of these containers are better space utilization when shipping dense or heavy articles, and improved shipping frequencies. Maximizing weight-load factors provides the lowest per-unit transportation cost, and increased shipping frequency provides the lowest per-unit inventory holding cost.

In addition, the Canadian Government allows carriers and shippers to enter into service contracts so that service packages can be designed to meet a particular shipper's market needs. These contracts include mutually agreed upon rates, conditions of service and volume commitments—permitting carriers and shippers to better forecast costs, base loads, traffic levels, and to project supply and demand over a given period of time.

Transit times and handling costs as well as the statistics which show that the port handling costs in Canada are less than U.S. ports were discussed by Senator Inouye.

There also has been several discussions of the difference in traffic flow between the United States and Canada. The bottom line shows that there were 28,500 more containers moved via the United States between 1976 and 1980 than moved via Canada.

Extension of U.S. regulation to Canadian carriers, as proposed in this legislation, could well result in upsetting the positive flow of Canadian traffic to our west coast ports, and in a decision by Canadian carriers to refuse to handle U.S. freight. This refusal would not necessarily mean that the so-called diverted freight would move through U.S. ports unless their rates and services meet a shipper's competitive needs.

What this refusal may well mean is that the higher U.S. transportation costs may force U.S. producers to abandon international markets. Transportation costs are especially critical to U.S. producers' efforts to compete abroad since they can account for up to 20 to 40 percent of the delivered price of U.S. goods in foreign markets.

Rather than enact this legislation, the shippers we represent strong would urge early and favorable action on your regulatory reform bill, S. 1593, Shipping Act of 1982. By giving shippers and carriers the right to enter into service contracts and by providing U.S. carriers with more flexibility in the intermodal area, you are rewriting the rules of the game in a manner best suited to improve the competitive position of U.S. carriers and ports.

The real issue under consideration is not the filing of tariffs, but rather the ability of both shippers and carriers, including American-flag carriers, to compete effectively. If our goal is to reduce government marketplace interference so that our shippers and carriers can effectively market their goods and services, then Congress

must remove the arbitrary restraints impairing the competitive efforts. We believe that less, not more, Federal regulation is needed if our country is to improve its partipation in global markets and solve the plight of its merchant marine.

Again, we urge early and favorable consideration of S. 1593 and thank you for the opportunity to comment.

[The statement follows:]

STATEMENT OF ROGER WIGEN, VICE CHAIRMAN, WATER FREIGHT TRANSPORTATION, MARITIME COMMITTEE, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. Chairman, members of the subcommittee, my name is Roger Wigen. I am a vice chairman of the Water Freight Transportation—Maritme Committee of the National Industrial Traffic League, and am transportation manager, intermodal and maritime, for 3M Company, St. Paul, Minnesota.

The National Industrial Traffic League is a voluntary organization of 1,800 shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, traffic, and transportation services of all modes. It is the only nationwide organizations which represents all types of shippers using all modes of transportation to move all types of commodities. Our members, directly or indirectly, are responsible for the routing of about 80 percent of our country's commercial freight.

The League's primary concern is to assure that our national transportation system is sound, efficient, well-managed, and privately owned and operated, and that it meets the needs of the nation as well as the needs of shippers and receivers of commercial freight. To arrive at the policies and positions reflecting our broad range of interests, our members, at least annually, consider, debate, and vote on pertinent transportation issues. Throughout our 75-year history, the League frequently has been the spokesman on transportation matters for business and industry.

While recognizing the current economic situation at east coast and gulf ports, the committee believes that the issue of whether to impose federal regulations on U.S. traffic moving through contiguous foreign ports must be viewed from a broad perspective. Unlike domestic transportation, the maritime industry is subject to the laws of differing sovereign govenments, and requires U.S. producers, to compete, not only among themselves, but also with their counterparts throughout the world.

The League's Maritime Committee opposes S. 2414 for several reasons. Underlying our reasons is the belief in the need for minimum amount of federal regulations consistent with the public interest so that the natural forces of a free marketplace can function effectively. We further believe that these market forces are sufficiently strong to regulate and balance the needs of carriers, shippers, and the public.

From a shipper's perspective, the decision to route traffic is based on two primary considerations—service and cost. Routing through Canadian ports offers inland U.S. shippers several advantages. Among them are better intermodal service and more competitive single-factor rates, the use of 20-foot containers, service contracts, quicker transmit times, lower labor costs for freight handling, and protection against service interruptions.

Canada allows its carriers to more effectively promote the use of intermodal service. The economies that result from this approach are evident not only in reduced operating costs for the carrier, and lower transportation costs for the shipper, but also, in terms of reduced administrative time and cost for each. Based on these intermodal efficiencies, Canadian carriers are able to offer more competitive single-factor rates.

Canadian carriers have encouraged the use of 20-foot containers. Two advantages of these containers are better space utilization when shipping dense or heavy articles, and improved shipping frequencies. Maximum space utilization is especially important when highway weight limitations would often require a carrier to move a truck at less than full capacity, and would require a shipper to pay for this wasted space. Improved shipping frequency gives producers greater flexibility in controlling inbound and outbound inventories. In other words, these factors mean the lowest per-unit transportation and the lowest per-unit inventory costs.

In addition, the Canadian government allows carriers and shippers to enter into service contracts so that service packages can be designed to meet a particular shipper's market needs. These contracts, which usually run on an annual basis, include rates, conditions of service, and other special features. This permits shippers and

carriers to predict costs, base loads, and traffic levels, and to project supply and demand over a given period of time.

Another factor is transit times. At present, it takes, on average, about 17 days to move freight from a midwestern point via Montreal to an inland European point. The same movement via New York takes about 19 days at a cost that is several hundred dollars higher. Port costs also are a contribution factor. As noted in the March issue of "American Shipper," a recent Maritime Administration study shows that the average labor costs per container are between 100 percent and 350 percent higher through U.S. east coast and gulf ports than they are through Montreal. From Halifax, this difference is between 160 percent and 510 percent.

Like U.S. producers, Canadian shippers also seek the most cost and service efficient means available to route their goods. On the west coast, where Canadian transportation costs are higher and service availability less than in the U.S., the more efficient U.S. ports are handling a great deal of Canadian freight. In fact, recent figures show that, between 1976 and 1980, 28,500 more containers were moved via the U.S. to or from Canada than were moved via Canada to or from this country. The same figures also show that, during this period, the trend for Canadian movements via the U.S. tripled.

Extension of U.S. regulations to Canadian carriers, as proposed in this legislation, could well result in upsetting this positive flow of Canadian traffic to our west coast ports, and in a decision by Candaian carriers to refuse to handle inland U.S. freight. This refusal to handle freight will not necessarily mean that this so-called "diverted" freight would move through U.S. ports unless both areas are offering rates and services that meet a shipper's competitive needs. What this refusal may well mean is that the higher U.S. transportation costs may force U.S. producers to abandon markets. Transportation costs are especially critical to U.S. producers' efforts to compete abroad, since they can account for up to between 20 percent and 40 percent of the delivered price of U.S. goods in foreign markets.

Rather than enact this legislation, shippers would urge early and favorable action on your regulatory reform bill—S. 1593, Shipping Act of 1982. By giving shippers and carriers the right to enter into service contracts and by providing U.S. carriers with more flexibility in the intermodal area, you are rewriting the rules of the game in a manner best suited to improve the competitive position of U.S. carriers and ports. For the real issue under consideration is not the filing of tariffs, but rather, the ability to compete effectively.

If our goal is to reduce federal marketplace interference so that our shippers and carriers can effectively market their goods and services, then Congress must remove the arbitrary restraints impairing the competitive efforts of shippers and carriers. We believe that less, not more, federal regulation is needed if this country is to improve its participation in global markets, and ameliorate the plight of its merchant marine. Again, we would urge early and favorable consideration by the Senate of S. 1593.

Thank you for this opportunity to comment. I would be glad to answer any questions you may have.

Senator GORTON. Thank you.

Mr. Finnerty.

Mr. FINNERTY. Thank you, Senator.

I am Peter Finnerty, vice president, public affairs, Sea-Land Industries, an affiliate of Sea-Land Service, the world's largest containership operator. I do appreciate the opportunity to appear before you today in support of S. 2414.

Sea-Land Service, Inc., is a nonsubsidized international transportation system in domestic and foreign commerce with 40 U.S.-flag containerships, 22 smaller container feeder ships, over 81,000 containers and 46,000 chassis. It provides scheduled containerized transportation between about 120 ports in over 50 countries—and in 1981 achieved gross revenues of over $1.6 billion.

Sea-Land Service, Inc., and affiliates transport ocean-borne general cargoes in the foreign commerce of the United States, Canada and Mexico by way of U.S. ports. Thus, we have a great interest in legislation that addresses cross-border movements of international containerized import and export cargo, as does S. 2414. U.S. com-

merce and relationships with its neighbors to the the North and South are vitally important and the bill has paid careful attention to maintaining balance and fairness in these commercial activities.

Some background information is useful in understanding the need for this legislation. Liner cargo shipments moving in the U.S. foreign commerce are subject to the Shipping Act, 1916. This act provides a flexible regulatory framework for carriers and shippers alike, assuring that rate are properly filed and fairly observed; prohibiting rebates, discrimination, and similar malpractices.

In 1978, a significant loophole in that statutory framework emerged. The Federal Maritime Commission, the agency responsible for administering the act, had held that when U.S. cargoes were moved ports in Canada, the mandates of the Shipping Act were applicable. However, this rule was overturned by a Federal appelate court in a decision commonly referred to as the *ACE* case. (Austasia Intermodal Lines *v.* Federal Maritime Commission, 580 F.2d 642, (D.C. Cir. 1978).) The D.C. Court of Appeals held that ocean transportation services touching only at foreign ports do not fall within the sope of the Shipping Act, even though the cargo in question has originated in, or was destined for, a point in the United States.

Canada also exerts government jurisdiction over liner shipping. As a requirement under the exemption from the anticombines law, liner conferences file tariffs with the Ministry of Transport. While individual liner carriers are not required to file tariffs, some do so. Thus, both Canada and the United States apply jurisiction to liner shipping, although to a different extent.

For many years increasing volumes of U.S. liner import and export cargoes have been moving via Canadian ports. We expect a similar trend will develop with Mexico. A market analysis study recently completed by the Maritime Administration shows that in 1980 the volume of U.S. exports and imports transshipped via Canadian ports have exceeded 2 million long tons.[1] Since 1976 U.S. exports transshipped via Canadian ports have doubled, totaling approximately 1.2 million tons.

Why does U.S. cargo move through Canadian ports? I think there are three fairly general reasons.

First, in some instances the service offered by Canadian rail, truck, port and/or shipping interests may be preferred by a shipper. S. 2414 will not close this competitive opportunity to foreign flag competitors.

Second, in some respects, costs in the United States have become too high, and many of us share some of the blame for that. Fortunately, our country is finally addressing these problems with a more effective regulatory structure, which I might add this subcommittee is helping to correct. With a competitive tax structure, with cooperation between management and labor to bring port and vessel operating costs down and with a renewed interest in modernizing our harbors, ports and navigable waterways U.S. cost disadvantages can be overcome. S. 2414 will have no bearing on these factors.

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[1] U.S. Exports & Imports Transhipped via Canadian Ports, U.S. Department of Transportation, Maritime Administration, Office of Market Development, March 1982.

Third, cargo is being lost because certain ocean carriers that serve Canadian ports solicit U.S. cargoes in a quite different manner than carriers serving U.S. ports. They operate in the U.S. marketplace and control an ever increasing volume of U.S. ocean-borne foreign commerce but do not comply with the requirements of the 1916 Shipping Act nor would they comply with the 1982 Shipping Act as passed in S. 1593.

Such foreign flag carriers are not subject to public tariff filing requirements. They operate with no constraints against unjust shipper discrimination or rebating, nor do they observe such other requirements as the act imposes upon carriers transporting U.S. liner exports and imports through U.S. ports. It is this inequitable loophole that S. 2414 would remedy.

This bill will remedy an unfair situation in which certain foreign flag interests are avoiding public disclosure.

All carriers which solicit cargoes in the United States or issue through bills of lading for the movement of U.S. cargo via ports in contiguous nations will be subject to the Shipping Act and thus to the Federal Maritime Commission's jurisdiction, just as all other ocean carriers in U.S. foreign commerce.

Such carriers will be required to disclose tariffs with the FMC, just as all other ocean carriers in U.S. foreign commerce.

Such carriers will thus be required to publish and collect rates for services rendered and will be subject to the act's antirebating provisions, just as all other ocean carriers in U.S. foreign commerce.

This committee has recently completed the monumental task of reforming the regulatory statute under which U.S. ocean-borne liner commerce is conducted, a task which has spanned 4 years. I am of course referring to S. 1593, the proposed Shipping Act of 1982. S. 2414 would amend the Shipping Act of 1916, but with a few minor changes can easily be accommodated to amend the Shipping Act of 1982.

Thus, the definition of "common carrier by water in foreign commerce" as contained in S. 2414 can easily be incorporated into § 3(6) of S. 1593 as a new subsection (c). Technical amendments would have to be made for appropriate references to the "Shipping Act, 1982" rather than the Shipping Act, 1916.

Mr. Chairman, S. 2414 is not a panacea. It will not force 1 pound of cargo to be moved through a U.S. port, contrary to the statement made in the testimony by Cast. It will not force one U.S. shipper to give 1 U.S. dollar to a U.S. carrier, contrary to many of the statements made by many of the shipper witnesses that preceded me. But its enactment will enable those of us who are competing hard for U.S. foreign commerce without Federal subsidies, I might add, to observe the same rules and regulations as other competitors for the same U.S. cargo. Nothing more.

The extent of this diversion is quantified in the Maritime Administration's study. The method of diversion is shown in a map [2] which I have attached to my testimony which outlines the Canadian National and Canadian Pacific Railroad systems. More impor-

[2] The map was not reproducible.

tantly, it shows their affiliates' penetration deep into the heartland of the United States.

I am also enclosing an article which appeared in Forbes magazine, March 1, 1982, entitled "Closing the Ring." This article reports on the activities of the state-owned Canadian National Railway and its affiliated companies within the United States. It shows that, together with their tie-in with Cast, they seem able to place an armlock on Great Lakes' traffic.

Since that article was published, Cast, because of a drop in its market and its apparent marginal rate-making, has encountered severe financial difficulties. However, the Canadian-owned Canadian National Railway Company, in a rather complex financial transaction, has bailed them out. In return, Canadian National obtained a 3-year option to acquire 75 percent of Cast.

Separately, the trade press also reports that the Canadian Government is making substantial investments in improving facilities at the Port of Vancouver, British Columbia, with the stated goal of competing for U.S. minibridge cargo.

I might point out, Mr. Chairman, that the West Coast ports, particularly in the Northwest, have recently come to realize that this same problem and threat is related to them. My understanding is that the ports in the Northwest have written to the committee expressing their support for this bill.

S. 2414 is needed so that the carriers who utilize the Canadian system operate under the same requirements as competitors using U.S. ports, that is, tariff publication and filing and equal treatment accorded to all shippers.

The House counterpart, H.R. 3637, of S. 2414 has been scrutinized by two committees of the House where numerous misconceptions concerning this remedial legislation were voiced. I would like to address some of these misconceptions.

The first is that this legislation interferes with Canadian domestic matters and will thus invite Canadian retaliation. This is not so. The import and export cargo affected is the foreign commerce of the United States, not Canada. The solicitations for cargo take place within the United States, not in Canada, and the contracts for international transportation service by water begin or end within the United States, not in Canada.

The second misconception is that the tariff filing requirement will create a regulatory expense which must be borne by shippers in the form of increased rates. A typical tariff, Mr. Chairman, costs approximately $1,000 and is a one-time expense, and tariff changes are approximately $20 per page. This price is minuscule compared to the many millions of dollars in revenues being earned by carriers using Canadian ports.

The third popular misconception is that this bill is for the benefit of U.S.-flag lines and that it is regionally oriented, that is for the benefit of North Atlantic ports. The overwhelming majority of U.S.-liner imports and exports are carried by foreign flagships. S. 2414 merely equalizes the obligations of all carriers serving U.S. liner commerce.

The facts belie the misconception that this bill is regionally oriented. It is a fact, as reported in the MarAd study to which I previously referred, that 25 percent of diverted exports, or 380,000 long

tons were cleared through the Seattle Customs District. This diversion increased by almost 100,000 long tons from 1979 to 1980. It is a safe assumption that this cargo moved via Vancouver, Canada.

The social cost of this growing cargo diversion is sufficient to warrant this subcommittee's attention and remedial action. The benefits which flow from the public disclosure requirement of S. 2414 mandate passage of this bill. Sea-Land strongly supports the enactment of S. 2414, Mr. Chairman.

I thank you and the subcommittee for allowing me to appear before you today and I would be pleased to respond to any questions.

[The article referred to follows:]

CLOSING THE RING—WHILE SOME U.S. FINANCIERS LOOK TOWARD THE SUNBELT, CANADA'S STATE-OWNED RAILROAD IS QUIETLY ENCIRCLING GREAT CHLAKES SHIPPING

(By Lisa Gross)

SMOKESTACK AMERICA.—Its very heart is the Great Lakes, over which great quantities of ore, grain, coal, petroleum and steel are shipped. To some, the heartland is dying. Canadians see its otherwise. State-owned Canadian National Corp., with $4.2 billion (Canadian) 1981 sales, through its subsidiaries—Canadian National Railway and Detroit-based Grand Trunk Corp.—and its 18 percent investment in the Cast container group, has been building up its traffic from the U.S. Midwest and Northeast via the Great Lakes. Now, with the proposed merger of Grand Trunk with the bankrupt Chicago & Milwaukee Railroad, the Canadians seem about to place an armlock on Great Lakes traffic.

The rail-sea network today comprises an arc of rails and containerized shipping round the northern and eastern ends of the Great Lakes. CN Rail covers the Canadian territory, and Grand Trunk covers the eastern lakes via three of its railroads: the Grand Trunk Western; Detroit, Toledo & Ironton; and Duluth, Winnipeg and Pacific. Cast North America Ltd., which moves containerized freight from the U.S. Midwest and Northeast to Europe via the Port of Montreal, is a key part of this setup.

Thus, if CN can bring off the pairing of Grand Trunk Western with the Milwaukee Road, it would slip a noose around northern import/export shipping. Incredible? Consider this: Exports through Canadian ports were up to $1.3 billion (U.S.) in 1979, from $460 million in 1974. According to the Federal Maritime Commission, in 1979 Canadian ports diverted $3.4 billion in containerized cargo, bound to and from northern Europe, from U.S. points. The Port of Montreal reported moving 238,000 20-foot equivalency containers in 1980, up from 128,000 in 1977. Meanwhile, cargo for Europe that formerly was shipped from the Port of Baltimore is down 25.7 percent, from 1.47 million tons to 1.09 million, costing the port some $33 million last year. Says Richard Lidinsky, director of tariffs for the port: "Most of the decrease is attributable to Canadian diversion and Cast operations."

Why would U.S. companies ship through Montreal? Because rates can be as much as 50 percent cheaper. Intermodal freight haulers (moving via truck, rail and ship) like CN have to abide by Interstate Commerce Commission rates on their U.S. leg, but they can adjust their door-to-door intermodal rates to shippers on the oceangoing end. Since Cast's cargoes exit North America from a Canadian port, regulated U.S. maritime rates don't apply.

Naturally, Cast's American competitors are upset. Organizations like the North Atlantic Ports Association are lobbying for legislation in Congress that would force Cast and other Canadian freight haulers to charge American rates on U.S.-originated shipments. But the big Canadians have powerful U.S. allies: GM and Du Pont are against the bill, as is the State Department, which worries about angering the Canadians.

CN seems unworried about angering the Americans. "I don't know why the American railways have never been as active in the import/export container business as Canadian railways," says CEO Robert Bandeen, 51, in his brisk, Ontario-Scots burr. "We could take traffic into Chicago and beat the pants off American railways coming out of New York or Boston." He paid $10.2 million in 1976 for 18 percent of Cast, which has earned $8.5 million in dividends for CN.

What Cast gave CN on intermodal shipping the Milwaukee Road could contribute on interstate shipping. With the Milwaukee as a partner, Grand Trunk's maximum east-west haul would increase from 334 miles to 800, its longest north-south haul from 175 miles to 1,000. And it would no longer have to hand over freight from its Duluth, Winnipeg and Pacific to the Soo Line (owned by CN's privately held rival, Canadian Pacific), the Burlington Northern or the Chicago & North Western. Last year DWP's interchange traffic revenues at Duluth were $37.5 million.

Bandeen is a man remarkable for having brought profitable operations to a state-owned railroad that hadn't seen black in 52 years. He became president in 1974, promising then to put CN into the black and to resign within eight years. He did it: CN was profitable by 1976 and Bandeen gave his resignation to the board January 25. Earlier, he had straightened out the Grand Trunk while serving as its president and made it profitable after 20 years of losses.

A tough-minded buisnessman, Bandeen first got the politicians in Ottawa to take over CN's moneylosing intercity passenger service. Then he straightened out CN's finances and won a recapitalization of the company from the Canadian Parliament. He will leave a multibillion-dollar ten-year expansion program and a request that the government allow CN to sell public shares to up to his successor, probably Vice President R.R. Latimer.

Bandeen says he resigned for personal reasons, but word in Canada's financial circles is that a publicly held U.S. company will lure him to the States beginning Apr. 1. With him gone, perhaps, U.S. railroad men competing for shipping in the Great Lakes region can breathe a little easier. A tough competitor has left the field.

Senator GORTON. Mr. Derome.

Mr. DEROME. Before I start, Mr. Chairman, I would like to introduce on my left our counsel, Mr. Streeter, from Wheeler & Wheeler.

I wish to thank the chairman, Senator Gorton, Senator Inouye, and other members of the subcommittee for inviting Cast to express its views on the bill S. 2414. At the outset allow me to clarify Cast's present financial and share ownership status which could be erroneously perceived.

While it has been insinuated that Cast's recent financial problems could be attributed to its "noncompensatory" rate structure, such is not the case. While it is true that Cast was in severe financial difficulties, those difficulties stemmed from certain financial arranagements which were totally unrelated to Cast's tariff structure. It is respectfully submitted that while Cast's rates were substantially lower than those maintained through the North Atlantic ports, that they were fully capable of covering Cast's normal operational costs.

Furthermore, it has been stated that the role of the Canadian National Railway and, therefore, that of the Canadian Government has changed during recent refinancing of the Cast group. Actually the overall package consisted of assets disposal of up to $200 million. Ninety-five percent of this amount consisted in the disposal of ships, with or without back-to-back charter parties, and of other assets to third parties that are completely unrelated to the CN.

The CN's actual participation in this financing was strictly limited to buying and leasing back $10 million worth of shore equipment located in the Port of Montreal. Contrary to what has been said, this CN did not buy the terminal itself.

Actually the terminal facilities are owned by the National Harbors Board which makes it very difficult for us to sell it. Nor has the CN obtained an option to buy 75 percent of Cast's container business within 3 years. The fact is that the option may not be exercised before 3 years. The assertion that Canada has now accepted

full financial responsibility for the activities of Cast are therefore misleading and inaccurate.

Two other points merit attention.

First, it has been stated that the legislation is necessary because Cast is said to discriminate between shippers. This rationale fails to take into consideration the fact that no shippers have suggested that they need this protection. In fact, besides the immediately concerned interests who are present here today, I know of no other supporters of this bill.

Furthermore, this bill, which would increase Cast's regulatory burdens, is in direct conflict with the spirit of deregulation manifested by the recent passage of the Staggers Act. The Staggers Act specifically authorizes the Interstate Commerce Commission to exempt the transportation of intermodal containers from regulation. This exemption reflects the congressional determination that intermodal transportation will be enhanced through the elimination of regulation and that the forces of free competition will best serve the needs of the shipping public.

Indeed, examples of the savings to be achieved through deregulation are reflected in the recent moves by ConRail to offer new and reduced charges to shippers. It is of significance that the ConRail charges because of the Staggers Act are not reflected in published tariff rates filed with the ICC. It is therefore ironic that the North Atlantic ports, which stand to be the beneficiaries of the unpublished volume discounts offered by ConRail, are now voicing the opinion that strict regulations have to be enforced with regard to the movement of the same containers when the latter are transported by interests other than the ones they, the North Atlantic ports, stand to benefit from.

It is Cast's position that the bill is an unnecessary regulatory burden that will not accomplish any beneficial purpose. It is our feeling that this bill will only increase our own administrative and legal costs without permitting us the flexibility that is necessary to meet the demands of the ever-changing marketplace.

Because of the inherent inflexibility of tariff filings, Cast will no longer be able to base its rates solely upon existing economic conditions. Rather, it will have to anticipate the unforeseen and build in a necessary margin of safety. As a result, rates will inevitably rise. In our opinion, this will not be in the best interests of the American shippers and consumers which have come to depend on Cast's services.

Thank you, sir.

[The statement follows:]

STATEMENT OF LOUIS DEROME, VICE PRESIDENT, GOVERNMENT RELATIONS AND SECRETARY, CAST NORTH AMERICA, LTD.

This statement is submitted by the Cast System. Initially, Cast wishes to thank the members of this Subcommittee for the opportunity to present its views on S. 2414. After discussing Cast's position on this bill, the statement will attempt to clarify and correct various misstatements made over the past few months.

S. 2414—AN ALTERNATIVE EVALUATION

In advocating passage of a bill to deal with the alleged problem of "Canadian diversion," the North Atlantic ports and their allies have advanced three primary contentions. First, they claim that the failure to regulate Cast has led to the diver-

sion of containerized freight to the Port of Montreal away from the North Atlantic ports. Second, they assert that Cast's operations have caused the loss of thousands of jobs. Third, they have gratuitously claimed that the shippers who use Cast's service require protection from Cast's allegedly discriminatory practices. The above contentions simply lack merit.

Cast's freedom from regulatory restraints does not explain either its growth or its ability to attract business from importers and exporters located in the United States. Nor does it explain Cast's ability to provide a transportation service that is far more responsive to the economic needs of its customers located in the United States than that provided by Cast's competitors. In the first place, Cast's operations within the United States are already subject to regulation. It should be carefully noted that Cast since 1976 has operated within the United States under the jurisdiction of the Interstate Commerce Commission which compelled Cast to prove that the public convenience and necessity required its service. Furthermore, the ICC through its tariff, insurance and reporting requirements continues to exercise jurisdiction over that portion of Cast's operations which is conducted within the United States.

Cast's growth and ability to attract business can be explained by the fact that it early developed a concept of containerized operations that was innovative and not confined by the rigidities of the break-bulk traditions that continue to stultify its competitors. By standardizing and owning its containers and operating equipment, by computerizing their movement, by maintaining strict control of the container's movement from the original inland source to ultimate inland destination and by staying independent of conference groupings, Cast has developed an extremely efficient multi-modal system for moving goods across the Atlantic. This concept has been responsible for the U.S. shippers' attraction to Cast. Simply stated, U.S. shippers and receivers, by taking advantage of Cast's service, have been able to enhance their own position in the international market place. This simple fact has been totally ignored by the North Atlantic ports and their allies.

The above are not the only factors that entered into Cast's being able to provide a service that until recently was far less costly than that of any of the other carriers operating on the North Atlantic. It should be noted that Cast, by operating through Montreal, has an overall advantage in terms of miles traveled between North America and Europe. Since the ocean portion of the voyage is at least one day shorter between Antwerp and Montreal than between Antwerp and New York, Cast will realize substantial savings in that both its overall transit time and related costs of operation are less than that of an ocean carrier operating between Antwerp and any of the North Atlantic Ports. It will also realize savings in terms of labor costs by virtue of the shorter duration of the voyage. In addition, the cost of docking a vessel in Montreal is much less than the comparative figure to dock a vessel in New York. If it is assumed that the vessel will be docked for 3 days for loading and unloading, port charges alone, assuming a vessel of 29,884 gross registered tons and 23,094 net registered tons will range from $20,243 (U.S.) in Philadelphia and $23,334 (U.S.) in New York to $24,599 (U.S.) in Baltimore, but only $14,133 (U.S.) in Montreal. These figures are based on charges incurred by Cast and include agency fees, tonnage taxes, pilot fees, linesmen charges, tugs, dockage rental and necessary fees paid to port officials. They do not include stevedoring charges.

Without belaboring the point, it should also be noted that Cast realizes substantial savings by calling on only one port to load and unload containers. Since the major costs in ocean shipping involve the overall use of the vessel itself, it must be fully utilized at all times. For example, if a vessel calls on four ports in discharging its import freight, it must hopefully be able to coordinate the loading and unloading at each individual port in order to call on the next port at a time where it can minimize port and labor charges. Unfortunately, it is seldom possible to coordinate the various calls that the vessel must make. As a result, the overall costs of operating the vessel are multiplied by virtue of the vessel sitting idle or by having to pay the prime labor charges that are accrued when a vessel must be unloaded and loaded in the middle of the night or on holidays. By eliminating the need to coordinate the vessel movements and by coordinating only the trucking movements, Cast has been able to eliminate many of the unnecessary costs associated with multiple ports. As demonstrated by its growth, Cast not only has been able to realize these cost savings, but it has translated such savings into lower rates which it has passed on to the many shippers it serves.

In testimony given before the Subcommittee of Commerce, Transportation, and Tourism, the NAPA spokesman attempted to insinuate that Cast's recent financial problems could be attributed to its "non-compensatory" rate structure. Such in not the case. While it is true that Cast was in severe financial difficulties, those difficulties stemmed from certain financial arrangements which were totally unrelated to

Cast's tariff structure. It is respectfully submitted that while Cast's rates were substantially lower than those maintained through the North Atlantic Ports that they were fully capable of covering Cast's normal operating costs.

At this point, it should be emphasized that the role of the Canadian National Railway, and therefore, that of the Canadian Government has not changed during the recent refinancing of the Cast Group. The overall package consisted of assets disposal of up to $200 million (U.S.). Ninety-five percent of this amount consisted in the disposal of ships, with or without back-to-back charter parties and of other assets, to third parties that are completely unrelated to the CN. The CN's actual participation in this financing was strictly limited to buying [and leasing back] $10 million worth of shore equipment located in the Port of Montreal. Contrary to what the Special Counsel to the Traffic Board of the North Atlantic Ports Association is reported to have said [*Journal of Commerce,* May 14, 1982], the CN did not buy the terminal itself; the terminal facilities are actually the property of the National Harbours Board. Nor has the CN obtained an option to buy 75 percent of Cast's container business within three year. The fact is that the option may not be exercised before three years. Counsel's assertion to the effect that "Canada has now accepted full financial responsibility for the activities [of Cast]" are therefore inaccurate and purposely misleading.

In opposing this bill, Cast in not attempting to create or prolong a situation where it enjoys an artificial protective barrier from competition. As a new independent operating on the North Atlantic, with orginal capital in 1969 of only $360,000, Cast has from the outset had to fight to survive. It is thus keenly aware of the value of competition and the need to provide innovative, efficient and cost effective service.

If Cast is required to file its tariffs with the FMC, it may be readily anticipated that it will encounter an immediate increase in both administrative and legal expenses as the FMC and its procedures will be constantly used to inhibit and delay Cast's ability to offer responsive rates to shippers and receivers alike. Moveover, Cast will be forced to establish rates higher than would have otherwise been the case in order to protect itself against unanticipated increases in its own costs of doing business. In other words, it will have to increase its margin of safety and forego the present flexibility that is built into its existing rate structure. The net effect would be that shippers will be deprived of Cast's ability to establish rates that reflect its present costs and will therefore be forced to pay higher rates than necessary. As such, the bill will definitely have an inflationary impact on international commerce, will adversely affect the balance of payments of the United States, and will increase the costs of imported goods to the ultimate consumers.

In attempting to justify this bill, the proponents have asserted that Cast's service has eliminated thousands of jobs at U.S. ports. This grossly exaggerated claim is not, and indeed cannot be supported by any meaningful statistics. Figures obtained from the Maritime Employers Association, the entity responsible for hiring stevedores in the Port of Montreal, reflect as of May 20, 1982, that 1,209 stevedores, including checker, are employed in the Port Montreal. This figure includes workers employed in bulk and general commodity operations as well as in container operations. Therre are, in the entire work force in Montreal, only 256 container specialists and 50 container checkers. These workers are responsible for the entire shipping operation in the port including traffic that either originated or is destined to points in Canada as well as the traffic moving through Canada to and from the United States.

Cast employs 165 stevedores at its Montreal facility. Of these, only 100 are involved with Cast's container operations. If it were true that its service had eliminated thousands of jobs, Cast would have to have hired far more than 100 longshoremen in its container operations.

The baseless and extremely exaggerated nature of the North Atlantic Ports' claim is illustrated by the following formula. Official Transport Canada statistics for 1980 show an overall surplus in favor of Canada of 5,366 TEUs. Based on Cast's operations, it takes 268 container crane hours to stevedore 5,366 containers. Assuming a container gang of 20 individuals, and that an individual will work 1920 hours per year (40 hours $\times$ 48 weeks), the net additional employment needed to stevedore 5,366 containers is only 2.79 individuals. This figure is derived by multiplying 268 hours times 20 men which results in a total of 5,360 man hours to load 5,366 containers. When 5,360 man hours are divided by 1,920 hours it is seen that only 2.7 men would have to be hired to handle the net surplus. If a gang of 16 were used rather than 20, the formula will reflect a net change of only 2.2 individuals. If only the Canadian surplus on the East Coast were taken into consideration, the above formula using a gang of 20 reflects a gain of only 31.6 stevedore jobs in Canada

while on the West Coast the above formula results in a gain of 28.8 stevedores in the United States.

On the other hand, it should be carefully observed that Cast has itself created hundreds of jobs in the United States. For example, Cast hired 75 former employees of Seatrain Lines, Inc. when that company withdrew from North Atlantic operations. Furthermore, Cast has already hired a total of 60 American drivers and helpers in order to perform trucking operations within the United States. These employees are located in Chicago, Ill. and Detroit, Mich. terminals. It is Cast's intention, following the grant of additional motor carrier certificates by the ICC, to employ additional United States citizens in its trucking operations. All told at present the Cast System employs over 200 U.S. citizens at its various facilities in the United States. In addition, Cast is indirectly responsible for the employment of numerous individuals who work for the U.S. carriers, both rail and motor, that Cast uses where it lacks appropriate authority from the ICC.

The attempt of the proponents of this bill to camouflage their true intentions by claiming that Cast's operations are detrimental to the shipping public is baseless. In reality, this bill is little more than a blatant attempt to force U.S. exporters and importers to ship their goods through the North Atlantic ports, even though this results in a substantial increase in their shipping costs. If Cast is able to refine its operations using the Port of Montreal and to pass on its savings in the form of lower charges to American shippers, it should be encouraged to do so. Indeed, American shipping companies should be urged to follow Cast's example in the best interests of all concerned. In this light, it should be carefully noted that no shippers or receivers have stepped forward to support this bill. In fact, Cast is aware that the following companies have taken the opportunity to alert their Congressmen of their opposition to the so-called Canadian Diversion Bill that is pending in the House of Representatives: Ford Motor Company, Volkswagen of America, Motor Vehicle Manufacturers Association, Cyclone International, Minnesota Mining & Manufacturing, La Choy Food Products (a division of Beatrice Foods Co.), Asoma Chemicals, Olin Chemical, Powell Metals & Chemicals, Inc., Gallard-Schlesinger Chemical Mfg. Corp., Advent Chemical Corp., E. I. DuPont de Nemours, Dow Chemical, Mohawk Fabric Co., Ferro Corporation, Winter-Wolff, Eder Bros., The Detroit/Wayne County Port Authority, The Wine & Spirits Shippers Association, Inc., Julius Wile Sons & Co., Inc., Foote Mineral Co., Wyandot Popcorn Co., Thiokol/Carstab Corporation, Agricultural Exports, Inc., Intertrac, Agfa-Gevaert, Baker Furniture, Wickes Agricultural, GKN Automotive Components, Inc., The American Importers Association, Inc., the National Customs Brokers & Forwarders Association of America, The Myers Group, Inc. (Ocean Freight Forwarders), Chevalier Importers, Inc., Coast Trading International, Mannington Mills, Inc., Lubrizol Corporation, Upjohn International, Inc., Fiat Allis, Hobart Brothers Company, Abbott Labs, the Wynn Oil Company, Emerson Electric, Kaiser Aluminum and the National Industrial Traffic League.

In light of the evident shipper opposition, it must be concluded that it is the ports and their allies who are seeking to protect their own selfish interests at the expense of the American consumer. This attitude is clearly evidenced by the reported remarks of David J. Ziolkowski of the Maryland Port Administration [*Journal of Commerce*, October 22, 1981], "that the North Atlantic Ports Association Traffic Board could not look out for shipper interests in this case. I'm not saying we don't give a damn about shippers. But we have to, at this point, look to the responsibilities with which we have been entrusted. * * * Our point of view at this time is it's the ports."

Furthermore, this bill, which would increase Cast's regulatory burdens, is in direct conflict with the spirit of deregulation manifested by the recent passage of the Staggers Act. The Staggers Act specifically authorizes the ICC to exempt the transportation of intermodal containers from regulation. This exemption reflects the Congressional determination that intermodal transportation will be enhanced through the elimination of regulation and that the forces of free competition will best serve the needs of the shipping public. Indeed, examples of the savings to be achieved through "deregulation" are reflected in the recent moves by Conrail to offer new and reduced charges to shippers. (See Appendix 1.) It is of significance that the Conrail charges, because of the Staggers Act, are not reflected in published tariff rates filed with the ICC. It is ironic that the North Atlantic Ports which stand to be the beneficiaries of the unpublished volume discounts offered by Conrail have not voiced any concerns about potential discriminatory treatment afforded shippers that are unable to take advantage of the volume discounts. If NAPA is to be consistent, it would seem that they should be advocating the immediate re-regulation of rail rates covering the movement of containers through the North Atlantic Ports.

If the North Atlantic ports are truly interested in fair play and have at heart the best interests of the American consumers and exporters, it is strongly urged that they join with Cast in seeking to eliminate all antiquated regulations that inhibit efficient, economic intermodal transportation services. In so doing, they would truly advance the interests of the American shipping and consuming public. The instant legislation which is, in effect, aimed at shackling a single competitor simply cannot be justified.

In short, it is respectfully submitted that this bill will not solve the fundamental problem of cargo diversion through Canada. Rather, it will simply serve to increase the costs associated with the international movement of containerized freight on the North Atlantic by depriving Cast of its ability to respond expeditiously to the needs of the marketplace in order to provide service at the lowest possible cost. In addition, it is possible that this bill will serve as an impetus to Canada to pass similar legislation which would surely prove detrimental to the best interests of United States ports located on the West Coast where diversion is to the United States from Canada. Needless to say, the overall impact that may be expected from passage of this bill is not in the best interests of U.S. shippers and recievers who presently use the Canadian land bridge, or of the Canadian shippers and receivers which choose to use the Port of Seattle. It is respectfully urged that the subcommittee consider at length the overall effect of this legislation and not be swayed by the unsupportable positions of the proponents of this bill.

In closing, the subcommittee is requested to consider that the ultimate beneficiary of Cast's service has been and continues to be the shipping and consuming public. Cast has passed on significant benefits and savings to U.S. shippers and receivers who have chosen to utilize Cast's service rather than the service of one of its competitors. These savings resulted in large from Cast's creation of a highly efficient and economical blend of the many components of its total transportation network, each closely coordinated with the others. This blend permitted it to realize the cost benefits of fully employed, fuel efficient ocean vessels, and to maximize the cost benefits associated with truck and container equipment balancing and reduced fuel consumption. In addition, Cast's single through bill of lading has provided the acceptance of through responsibility and thus the realization of a true intermodal service.

The shippers too have realized significant benefits, other than a mere reduction in transportation costs. One, they have been able to institute a house-to-house international move with but a single phone call. Two, the shippers need only call that same number in order to trace their goods, to seek advice in the loading of the container, to advise of difficulties, or to obtain information. Three, the one and only commercial invoice is cut at the same time as the bill of lading. The simplicity of this system eliminates surprise charges for various inland moves which can frequently occur when a container is shipped on a "port-to-port" only arrangement. Here, the cost being established up front, it enables the shipper to plan his financial needs ahead.

In short, the efficiency that is built into the network of Cast companies and offices permits it to achieve its ultimate goal—the best service at the best price for the customer. It is the twin advantages of cost and service which Cast has joined together in order to offer the United States shipping public the opportunity to generate increased international trade, and to increase employment, both of which serve to stimulate the economy of the United States.

Many thousands of individuals, as well as corporations both large and small, have indicated, through their use of Cast's service, their need for the full range of benefits which are now provided by Cast. It seems only logical that such overwhelming acceptance and support should not be discouraged or eliminated by restrictive legislation, but rather should be encouraged so as to assist the United States to maintain its dominance in international trade.

It is respectfully submitted that the preoccupation with the port of call does little to assist the U.S. shipping and consuming public. This subcommittee is thus requested to consider the overall picture and to realize that this legislation stands to have a detrimental effect on Cast's ability to continue to provide the flexible, efficient and economical service that it has held out to the American shipping public. In the final analysis, Cast's growth can only be attributed to the fact that it has responded to a definite need which Cast has satisfied through the provision of efficient, cost effective intermodal transportation service. The members of this subcommittee are thus urged to join with the Departments of Justice, State, Commerce and Transportation and the Council of Economic Advisers in opposing enactment of "Canadian diversion" legislation similar to that being considered today.

Again, I wish to thank you for the courtesy that has been extended Cast by this subcommittee.

Senator GORTON. Thank you very much.

We will start with a question for Mr. Wigen.

Again, I would like to ask you about the relationship between this proposal and S. 1593. If S. 1593 or something like it passes, a number of the benefits which you outlined as accruing to shippers through Montreal are going to be available in the United States as well.

Under those circumstances, should S. 1593 pass, would there be any particular penalty or disadvantage in having S. 2414 as well and putting everyone on an equal footing?

Mr. WIGEN. We think so, because we view S. 1593 as removing some of the current restrictions on carriers serving the United States so that they would be better able to run their business as they see fit. It also has some new rules as far as intermodal service, and allows service contracts.

So we view it as a bill which gives the carriers a better opportunity to compete. The fact is we view the whole issue that way. We don't view it as a tariff filing issue. So I guess our views as far as S. 2414 would be the same. We don't see the need for S. 2414.

Senator GORTON. What kind of commodities are so price sensitive as to have their foreign markets jeopardized by this bill?

Mr. WIGEN. Well, in today's market, I can't give you the specific commodities of all league shippers. However, with exchange rates, we recently saw what impact they could have on competing in foreign countries—with very little change in values or dollars. The best figures we have are that many products are so sensitive because transportation is a 20- to 40-percent chunk of their total business costs. Any significant change in the transportation cost would make it even more difficult for shippers to compete in foreign markets.

Senator GORTON. Mr. Finnerty, the representative of the Ford Motor Co. stated that he believed that carriers serving U.S. east coast ports, "are aware of the rate levels but are unwilling to meet them. Therefore, S. 2414 is not a mechanism to provide public access to Cast rates, but rather a mechanism to harass Canadian carrier interests to raise rates."

What response do you have to that?

Mr. FINNERTY. Well, I think that the witness from Ford went on to make quite a few other erroneous statements, Senator, and I would be happy to go through them point by point if you wish.

The fact is that the bill itself provides for public disclosure. It does not provide for any increased harassment opportunity. It does not provide for any severe increase in costs either to the customer or to the carrier and I think his contention is groundless.

Senator GORTON. Does this imply that you don't know what rates Cast is offering?

Mr. FINNERTY. We do not, that is correct.

Senator GORTON. How would knowledge of apparently lower rates make it any more attractive or possible to meet them?

Mr. FINNERTY. It would indeed make it possible to meet them, Senator, because you would have knowledge of their exact rates on specific commodities at specific locations. That knowledge would be

available not only to competing carriers, but would be available to similarly situated shippers and all parties in the American marketplace would be dealing in an evenhanded fashion with each other under one uniform set of competitive rules.

Senator GORTON. Would Sea-Land be likely to meet those rates under some circumstances?

Mr. FINNERTY. Quite possibly.

Senator GORTON. The representative of the Port of Detroit told us that costs of shipping through Canada would remain markedly lower even if S. 2414 were enacted. Under those circumstances would it be of any help to you?

Mr. FINNERTY. I think it will be helpful, Senator. I would agree with him that the costs will not rise, that the rates will not necessarily change and that there will not be any kind of automatic diversion of cargo. I think that the public disclosure and the comparable application of American regulation is essential if we are going to maintain what we keep referring to as a fair and free enterprise system.

Our government cannot, as it often does, abrogate its responsibility in protecting certain economic principles and free enterprise principles. If we permit foreign governments to intervene either through government ownership or through imposition of foreign rules that act to the detriment of American enterprise, we are going to concede that market to control by foreign entities.

Senator GORTON. Finally, Mr. Derome, does Cast refuse to serve any shippers wishing to move liner cargo on its vessels?

Mr. DEROME. No, we don't.

Senator GORTON. Does Cast specifically solicit more lucrative liner carriers with the effect of any discrimination on shippers?

Mr. DEROME. It has been stated that we have discriminated against different shippers, but I truthfully cannot say nor see where we have discriminated against anybody. We have offered, as it has been pointed out by the Ford witness preceding us this morning, that we have responded to their volume and their needs in terms of price and in terms of service.

Senator GORTON. Has Cast ever given rebates to selected shippers?

Mr. DEROME. No, sir.

Senator GORTON. Does Cast charge lower rates for containers that top off its vessel capacity on given voyages?

Mr. DEROME. Not to my knowledge.

Senator GORTON. How would S. 2414 raise costs to carriers who use Cast or other shippers out of Canada?

Mr. DEROME. Well, in at least two very apparent ways, one being the regulatory process which allows competitors to debate the rates which would be filed, and debating these rates will definitely introduce very heavy legal fees. This is one.

Senator GORTON. In that respect wouldn't that cost be substantially reduced, if not removed, by the passage of S. 1593?

Mr. DEROME. The passage of S. 1593 is not something that I can really discuss because it is something which is beyond the scope of my knowledge. I fear I would be talking about something which is beyond my knowlege.

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Mr. STREETER. Senator Gorton, I think for the record that I would agree from my own review of S. 1593 that the potential legal costs and challenges before the Federal Maritime Commission would be reduced. But you must be aware that as of this moment, and particularly when this matter first arose in the House, we were not that sure of the ultimate outcome and we still aren't.

Senator GORTON. And we can't be certain of it now. I understand that.

Thank you very much. Senator Inouye.

Senator INOUYE. Thank you very much.

I would like to start out by asking the Sea-Land representative, your company is not subsidized, is it?

Mr. FINNERTY. That is correct, Senator. We are the one major liner carrier in foreign commerce that does not participate in the Federal Government's subsidy program.

Senator INOUYE. We have two provisions in the laws of the United States relating to the merchant marine. One is the Controlled Carrier Act and the other is the Anti-Rebating Act. It has been suggested that these two provisions are easily violated through this Canadian diversion loophole. Do you agree with that?

Mr. FINNERTY. I would say that they could be, Senator. The key to adequate enforcement of those provisions as well as others in the law is compliance with the Shipping Act, and when one uses a contiguous nation's port there is no compliance whatsoever. Therefore, it would be entirely possible for someone to circumvent those provisions in the Shipping Act.

Senator INOUYE. You are aware of the recent *Polarctic* case?

Mr. FINNERTY. I heard it discussed earlier.

Senator INOUYE. If the loophole provides for by-passing the law, would you suggest that we should repeal these two sections?

Mr. FINNERTY. Not at all, Senator. I think, if anything, the provisions that were passed through your leadership and others several years ago will indeed become, if anything, more necessary in the future.

As I watch the progress of the UNCTAD liner code abroad and the continued passivity and inactivity by the administration to develop an adequate response to this movement by our trading partners, including Europe and Japan, I fear that there is every opportunity for foreign governments to move into this void, this absense of an adequate policy, and to severely interfere and contract private enterprise in American shipping. It would definitely act to the detriment of the United States if we do not have some governmental limits set on what foreign governments can do to interfere and intervene in this marketplace.

Senator INOUYE. I have long looked upon the relationship between Canada and the United States to be a very unique one. We may be two separate sovereign nations, but in practice we are possibly cousins. Our borders are easily opened to either side, we don't have any visa requirements, we have companies operating in Canada and Canadian companies operating here.

Will the enactment of this bill prohibit shipment via Canada?

Mr. FINNERTY. No, Senator, it certainly won't. As I tried to point out in the prepared text, I cannot foresee any way that the passage of the bill would in any way interfere with the continued use of

carriers at Canadian ports. It will allow for balanced competition and based on the adequacy of service and sufficient competitive will on the part of all of the ocean carriers involved, the cargo will still move up to the choice of the shipper.

Senator INOUYE. Do you agree with that, Mr. Derome?

Mr. DEROME. No, I disagree with that because basically the onus is going to be because of the increase in rates. The filing itself is not where the rates are going to be increased but the regulatory process mentioned.

Senator INOUYE. Why would you be forced to increase your rates?

Mr. DEROME. I am sorry?

Senator INOUYE. Why would the filing automatically result in an increase of rates?

Mr. DEROME. The filing itself will not. That statement is correct. But the regulatory process by which the filing of certain rates can be opposed is part of the very heavy expense.

Senator INOUYE. As your counsel indicated, with the passage of S. 1593 that problem, if anything, would be minimal at worst.

Mr. DEROME. There is another factor which is important with regard to the increase in rates, and it is the 30-day period whereby the carrier will have to anticipate during that period any unforeseen carrying expenses or operating expenses and they will have to be built in the rate. So the level will be maintained at a higher rate than it should and the only person or body who is going to pay for it is the U. S. shipper.

Senator INOUYE. Mr. Finnerty.

Mr. FINNERTY. Senator, I would like to point out, and this 30-day reference was made by other witnesses as well, that provision in the Shipping Act is there for the protection of American shippers and not American carriers. It is, I might say, a very minimal influence if one is to try and argue that in 30 days costs are going to in some fashion extraordinarily increase in a way that will result in higher rates overall. But the fundamental point is that the 30-day requirement of notice is for adequate protection of American shippers and not carriers.

I don't think you would get any argument from the carriers in the United States if it were to be removed. I think you would get a great deal of argument by the shipper community were it suggested that that 30-day notice period be removed.

Senator INOUYE. Mr. Derome, I am not too familiar with the Canadian laws, but is the Canadian National Railroad owned by the Government of Canada?

Mr. DEROME. It is a Crown Corporation, yes, sir.

Senator INOUYE. Does this Crown Corporation have any interest in Cast?

Mr. DEROME. It has an 18-percent interest in the holding company of the Cast group, not in Cast North America.

Senator INOUYE. What does that translate to?

Mr. DEROME. It translates into no direct involvement of the Canadian National Railway in the day-to-day operations of Cast North American, Limited.

Senator INOUYE. Under your corporate law do you have a board of directors?

Mr. DEROME. Yes; we do.

Senator INOUYE. Any representation from the CNR?

Mr. DEROME. We have no representation at all from the CNR, nor do we have anybody on the board of the CNR.

Senator INOUYE. What effect did the loan have on your operations? According to the papers it was $40 million.

Mr. DEROME. If I may precise this, this amount of money was an infusion of capital in the form of perferred shares, of convertible preferred shares. It was not a loan in itself.

Senator INOUYE. Is there an option on the part of the Canadian National Railway to acquire 75 percent of Cast Containers' container business?

Mr. DEROME. Yes, there is, sir, but only in 3 years from now, not at the moment. The option cannot be exercised now.

Senator INOUYE. But it can 3 years from now?

Mr. DEROME. Three years from now they have the possibility of exercising this option; yes.

Senator INOUYE. Would you consider that as direct interest in your operations legally or otherwise?

Mr. DEROME. I am afraid I don't follow your question.

Senator INOUYE. If the United States has an option to acquire 75 percent of Sea-Land, would you consider the interests of the United States as being of a significant nature, Mr. Finnerty?

Mr. FINNERTY. I would certainly consider it so, Senator, yes.

Senator INOUYE. Even if it is 3 years from now?

Mr. FINNERTY. Yes, indeed, that is like money in the bank.

Senator INOUYE. Mr. Derome, would the passage of this law deny any American shipper the benefits that he is enjoying at the present time, that is, a through bill of lading, lower port costs, or shorter delivery distances?

Mr. DEROME. It will not change the operational quality of the service that Cast is being able to offer at the moment. That will remain.

Senator INOUYE. Since this is a matter of two sovereign countries I believe competing for business, and I gather that some in Canada look upon this measure as being unfriendly and some have suggested that Canada may well retaliate, and I don't know how they will retaliate. Are you aware of the tax laws of Canada which prohibit Canadian business people from claiming the costs of TV advertising time on American TV stations as business expenses if those stations cover a Canadian audience?

Mr. DEROME. I am afraid that is one part of communications which I am not familiar with, sir.

Senator INOUYE. Well, that happens to be true and there is a big debate going on right now. Would that be unfriendly on the part of Canada?

Mr. Streeter.

Mr. STREETER. I think that is the position that is being taken by many within the United States, and I do think that is something that we should pursue as a country to eliminate that discrimination, or however you want to phrase it.

Senator INOUYE. Would you think that S. 2414 is equally unfriendly and discriminatory?

Mr. STREETER. No; I cannot agree with that.

Senator INOUYE. So we are not that unfriendly.

Mr. STREETER. I don't think we have every accused you of being so, sir.

Senator INOUYE. Well, I can assure you that this matter will be given our most careful consideration. I have learned a lot. A few things that I wasn't quite aware of before the hearing, but I still think that this matter should be considered seriously.

I am a free enterpriser, but I am also a nationalist at the same time. I hate to see the United States being the only one who adheres to a wide-open free enterprise capitalistic system.

In the case of the Japanese, as my good colleague mentioned, long ago, before it was popular, I suggested to the United States that we should be tougher, but we still adhere to the open marketplace and now we are singing a different tune.

Would Canada be concerned if eventually with the improvement of port facilities in Canada on the east and west coasts you would begin to attrack more and more business from us and thereby reducing our merchant marine? Would that be of any concern to you?

Mr. DEROME. Well, I would prefer to think that we would be helping the U.S. shippers to be competitive abroad, sir.

Senator INOUYE. In the case of an emergency would the Canadian shipping companies and carriers come to our assistance?

Mr. DEROME. Well, I think that in an emergency it would be a question of both Governments and that is beyond my scope of decision. But I think that the relationship between the two countries over the past years has been such that they have been considered to be friendly.

Senator INOUYE. Well, this takes us to another area, but I am certain you must have noted where I am coming from with some of my statements.

I fear for my country and its merchant marine. I am not suggesting that we rule the seven seas once again. Far from it. I would just like to see everyone play according to the rules with the same deck of cards. That is all.

With that happy note, I would like to thank all of you once again.

This hearing will be in recess. The record will be open for 1 week and if you wish to submit further testimony or change your testimony, please advise the committee.

Mr. STREETER. Senator Inouye, if I may, we would like to thank you on behalf of the Cast system. This has been the first time that we have been invited to participate and, so to speak, defend ourselves.

Senator INOUYE. We like to be objective, sir.

[Whereupon, at 1:35 p.m., the subcommittee recessed, subject to the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF J. STANLEY PAYNE, JR., GENERAL COUNSEL, VIRGINIA PORT AUTHORITY

I would like to thank you for this opportunity to speak on the serious, and controversial problem, of the diversion of American cargo through foreign gateways.

The Virginia Port Authority has been less zealous than others in our attacks on so-called "foreign marauders" for basically three reasons. First, since long before the rise of the substantial competiton of Canadian gateways, the VPA had been critical of the lack of rate flexibility and reponsiveness of the North Atlantic Conference. Second, in the industrial midwest hinterland we share with our NAPA sister ports (and now, the Canadian gateway) the deregulation of rail piggyback movements has hurt our market share at least as much as Canadian competition. Third, American ports' criticism of the flow of American cargo through Canadian ports has been characterized by some shippers, principally the very large ones, as somehow "anti-shipper", a tag no port can be in a position of wearing.

We can moderate our opposition no longer, however. We have seen the American midwest, the fertile industrial hinterland for North Atlantic ports, invaded with promises of rates at unbelieveably low levels. Worse, we have seen cargo solicited from an area within a few miles of our port, Hampton Roads, for routing through a Canadian gateway to Europe at a rate that is substantially less than that offered by lines serving Hampton Roads. While conference rates may be set at a higher level than is appropriate or necessary, rates of any profit-motivated company could not possibly be set at such low levels through Canada and be sustaining. Clearly, something is wrong.

The something is the regulatory loophole that does not require the filing of tariffs for the carriage of American cargo through Canadian gateways. What is wrong is the regulatory loophole that does not require that shippers be treated in a non-discriminatory manner. What is wrong is the regulatory loophole that provides incentive for American shippers to bypass American ports, costing thousands of Americans jobs.

How does the cloak of secrecy made possible by this loophole encourage competition? How can shippers even know what rates are being offered and know whether they are being treated fairly? How can steamship lines compete for traffic when competitor's rates are kept in secret? How can steamship lines serving the U.S. trade, and conforming to our laws designed to protect shipper, port, and steamship lines alike, compete with "rogue carriers, clothed in secrecy, who know the bounds of no laws?" And perhaps the basic question is "who is served by the continued existence of this loophole?" The answer is not surprising—the backdoor cargo thiefs and their very "select" customers. The losers—American shippers, American ports, and American steamship lines.

We urge Congress to close the loophole now. The diversion problem is not the result of the carrier's activities, but those of many, and is thus a continuing problem. Despite the recent financial illness of CAST, the Canadian gateway remains remarkably healthy. The legislation is, thus, not simply anti-CAST. Nor is it anti-competitive. The proposed required filing of such rates will provide the knowledge necessary for increased competition in today's markets for shippers, steamship lines, and port. Thank your.

STATEMENT OF G. B. PERRY, GENERAL MANAGER, NEW ORLEANS TRAFFIC & TRANSPORTATION BUREAU, INC.

A delay in receiving advice of the May 25, 1982 hearings on the above cited bill prevented our attendance. We do, however, desire that members of the Committee are aware of the position of the Board of Commissioners of the Port of New Orleans, and of those member companies engaged in the provision of services directly related

to international commerce. Acceptance, and consideration, of this statement will be appreciated.

We appeared before the House Subcommittee on Merchant Marine at hearings conducted on June 18, 1981, with respect to H.R. 3637. Our prepared statement, and additional comments, were published in Merchant Marine—Part 2, Serial No. 97-14 (June 23, 1981). It is our understanding that several of the parties presenting comments at that hearing, appeared also before the Senate Committee. While the opinions generally expressed in support of this legislation risk the qualification as repetitive, the fact must be appreciated that knowledgeable people engaged in the provision of international services recognize the serious threat of diversions of cargo through ports in contigous countries. The right, and desire, of carriers and ports to compete is denied where the inherent advantages of the ocean carriers serving the foreign ports are enhanced by a total freedom from U.S. imposed regulation. Repetition on an issue of this importance is, therefore, highly desirable.

While Congress considers a revamping of our maritime regulatory laws, the need remains apparent of safeguards to the shipping public. The urgency of improvement in our regulatory procedures is clearly manifested, with the well defined objective that greater freedom in management will result in greater competitive opportunities; that our position in world shipping will move into a more enlightened period. A strong impetus to these developments has been the advent of containerization of cargoes, which also bases the diversionary aspect, particularly with respect to Canadian operations.

It is difficult to conceive that Congress would, on the one hand, deal with measures designed to promote the competitive capability of the American maritime services, while on the other, discourage the capability to compete with services beyond the reach of those same legislative considerations.

We see the probability that Congress may be influenced by the Executive branch which foresees problems of relationship with Canada. But at no point have those problems been clearly identified, and we consider this to be a pressure which Congress may sensibly reject. Strong cause arises to consider that more than the simplicity of an FMC filed tariff prompts these sources to object to this legislation. For example, the matter of a continued filing of maritime tariffs seems to unduly trouble the Department of Transportation, and the purpose of this bill to require such filing immediately presents a philosophical conflict. In our judgment, the Department of Transportation is in clear error in the first instance by disregard of general opposition to the notion of discontinuing tariff filing—an error compounded by opposing the passage of a bill which is on all fours with the reform legislation introduced by Senator Gorton (S. 1593) and which is generally supported by both shippers and carriers.

Shipper opposition to S. 2414 might well be anticipated. But the form and purpose of such opposition should be equated. There is the ever-present desire to obtain services at the lowest price, and regulation is frequently considered to be a handicap. But the historical background of the 1916 Shipping Act supports the intention that all shippers should be treated alike; that the protectives of the law were necessary to insure that discrimination between shippers, and unsound practices by the carriers opposed the general conduct of American business. Parallel to the less-than thoughtful position of DOT, the opposing shipper views with alarm a non-existent threat to a most favorable shipping position. The fact that Canadian-port tariff filing requirements do not exist appears as beneficial, particularly since a competitor may not exhibit similar strength through cargo volumes, or sagacity in negotiation. We observed in prior comments:

"This bill does not seem to prevent an American firm from the utilization of services available through the Canadian ports, nor to extend more than the protectives accorded by the Shipping Act of 1916 to the public and carriers serving the United States ports. Passage of this legislation would place the U.S. and Canadian carrier in a collateral position, with equal and unhampered competitive opportunities."

Particularly to our interests as a major Gulf Port, we said:

"The ports would not be caused to stand by, without recourse, and observe the mounting diversion of national cargoes from their facilities. Equality in opportunity cannot be considered as anti-competitive, and represents in the purest sense an incentive to a higher degree of performance between and among ports and carriers, who would participate in the market."

In our judgment, this bill fits well with the objectives of S. 1593. The intended benefits to the shipping industry, and the improvements to trading in the international marketplace would be seriously impaired by withholding regulatory guidelines from this important segement of commerce. It is pointless, in fact, to undertake reform legislation without full equality in application to a full reach of the

services utilized by all of the exporters and importers of the nation. Fairness to all shippers, large and small, to ocean carriers joined in dependence upon ports providing facilities in step with demand, dictates that the legislative process be clearly directed to a well define objective.

The piece-meal approach which appears to influence consideration of S. 2414, and its House companion measure, is not at all suited to the development of landmark legislation which is recognized as a necessity.

The opportunity to present these comments is appreciated.

NATIONAL MARITIME COUNCIL,
Washington, D.C., May 18, 1982.

Hon. SLADE GORTON,
Chairman, Subcommittee on Merchant Marine,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to provide the Senate Subcommittee on Merchant Marine with the views of the National Maritime Council on S. 2414, a bill which would vest jurisdiction in the Federal Maritime Commission over common carriers by water engaged in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States.

The NMC is a nonprofit trade association which represents virtually all segments of the American maritime industry, namely, U.S.-flag liner and bulk carriers, seagoing and shoreside labor unions and major shipyards. The Council's objective is to foster the development of a strong, competitive, modern, American-built, privately-owned and -operated U.S.-flag merchant marine which will afford United States exporters and importers the finest and most cost-efficient fleet of commercial vessels in the world.

If enacted, S. 2414 would close a loophole in the regulatory scheme applicable to the liner shipping industry engaged in the U.S. foreign trade contained in the Shipping Act of 1916. This gap in the jurisdiction of the Federal Maritime Commission was pointed out by the Court of Appeals for the District of Columbia Circuit in *Austasia Intermodal Lines, Ltd.* v. *Federal Maritime Commission*, 580 F. 2nd 642 (D.C. Cir. 1978). In that decision the Court reversed the FMC and concluded that ACE was not a common carrier by water subject to the Shipping Act of 1916 because its service did not include vessels calling at U.S. ports. The Court of Appeals specifically explained that its holding was based on its interpretation of the definition of "common carrier by water in foreign commerce" presently in Section 1 of the Act.

The legislation would amend the definition of "common carrier by water in foreign commerce" so as to require, among other things, a common carrier by water satisfying the following criteria to file tariffs with the Commission pursuant to the provisions of Section 18(b) (1) of the Shipping Act of 1916: (i) the common carrier must be engaged in the ocean transportation of property; (ii) the property must originate in or be destined for the U.S.; (iii) the property must move through a port in a nation contiguous to the U.S.; (iv) the common carrier must advertise, solicit, or arrange, directly or through and agent, within the U.S., for the transportation of the property; and (v) the common carrier must engage in the transportation of the property between a U.S. point and a port in a contiguous nations.

In addition, it should be noted that S. 2414 would not intrude on the present division of jurisdiction between the FMC over common carriers by water and the Interstate Commerce Commission over surface carriers. Also, a common carrier by water would be prohibited from disclosing in its tariff the inland division of any through intermodal rate filed with the Commission.

The purpose of the legislationis to recitify an inequity in existing law. This inequity has an adverse impact on U.S. ports and carriers, both U.S. and foreign flag, who utilize American ports. Under present law, carriers using U.S. ports to transport cargo on an intermodal basis between U.S. points and overseas ports are subject to the tariff filing, nondiscrimination, and anti-rebating provisions contained in the Shipping Act of 1916. Carriers using Canadian ports to transport U.S. origin or destination cargo are not subject to those same provisions.

As result of this unequal treatment, U.S. ports are losing sizable volumes of cargo to Canadian ports, especially Montreal. Likewise, carriers serving U.S. ports are denied the opportunity to carry this cargo. A recent Maritime Administration study has quantified this diversion of cargo through Canadian ports. (U.S. Exports & Imports Transshipped Via Canadian Ports (March 1981)). On the export side, the value of the cargo diverted has risen from $459.9 million in 1974 to $1.31 billion in 1976. As for imports, the same MarAd report reveals that the value of such cargo has

risen from $757.8 million in 1976 to $2.1 billion in 1979. These figures result in significant losses of income and jobs in our ports and cargo for our carriers.

Accordingly, National Maritime urges the enactment of S. 2414. We request that this letter be made a part of the record on this legislation.

Sincerely yours,

H. R. DEL MAR, *President.*

PORT OF SEATTLE,
Seattle, Wash., May 21, 1982.

Hon. SLADE GORTON,
Chairman, Subcommittee on Merchant Marine,
Washington, D.C.

DEAR SENATOR GORTON: Thank you for inviting the Port of Seattle's comments on S. 2414 which proposes to extend Federal Maritime Commission jurisdiction over steamship carriers that transit their cargo via contiguous foreign ports, (i.e., Canadian or Mexican) to or from points in the United States.

The Port of Seattle endorses, in principle, legislation that requires filing of tariffs for through-intermodal traffic originating at or destined for points in the United States. If a carrier provides "door-to-door" service to or from any point in the U.S., it should be subject to the same ground rules without regard to what ports it may use in carrying out the transportation service. The fact that they elect to transit a foreign port should not allow them to avoid the usual requirements of common carriers serving the United States cargo.

This legislation would serve a useful purpose to provide appropriate coverage and continuity to the regulatory process.

Sincerely,

RICHARD D. FORD, *Executive Director.*

DOW CHEMICAL U.S.A.,
Midland, Mich., June 1, 1982.

Hon. SLADE GORTON,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN GORTON: The Dow Chemical Company wishes to advise that we are very strongly opposed to S–2414.

Forty million dollars worth of export business, which we move over Canadian ports in order to compete in foriegn markets, stands a very good chance of being lost to Dow and the United States should this bill be passed.

Loss of this business can mean loss of jobs. Lost jobs is the last thing we need more of in Michigan today.

Dow, as one of the largest chemical exporters in the U.S., contributes significantly to a positive balance of payments. Dow's contribution to a favorable balance of payments will be adversely affected by higher transportation costs resulting from this legislation.

Supporters of this bill contend that "shippers need to be protected" . . . no shipper that I am aware of supports this bill.

Supporters of this bill contend that "jobs have been lost" . . . not only do we disagree with this, but I assure you should this bill be passed, jobs will be lost because the U.S. again will have regulated itself out of this trade. I thought we were trying to reduce regulation in U.S. transportation.

The failure has been with high-cost U.S. East Coast ports and carriers who have failed to remain competitive and cost effective. These failures can not be legislatively corrected at the expense of mid-West exporters.

We strongly urge that S–2414 be defeated.

Sincerely,

W. A. ROSE, *Distribution and Quality.*

COUNCIL OF AMERICAN-FLAG SHIP OPERATORS,
Washington, D.C., June 2, 1982.

Hon. SLADE GORTON,
Chairman, Subcommittee on Merchant Marine, Senate Committee on Commerce, Science and Transportation, Washington, D.C.

DEAR MR. CHAIRMAN: The Council of American-Flag Ship Operators (CASO) represents the majority of the internationl common carriers in the United States merchant fleet. Our member companies own and operate a modern, diversified fleet of 161 liner ships, including break-bulk, barge carrier, container and roll-on/roll-off vessels. All of these ships are available for use by the United States Government during times of military emergency.

CASO members support S. 2414, a Bill to amend the Shipping Act, 1916, to provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States, the so called "Canadian Diversion Bill."

We would like to associate ourselves with the testimony given before your Committee on May 25, 1982 by Mr. Peter Finnerty of Sea-Land Industries, Inc. We vigorously support the views expressed in his testimony.

Under present law, U.S. liner carriers as well as U.S. ports are at a substantial disadvantage in competing with carriers serving Canadian ports. These carriers are not subject to the Shipping Act of 1916 or to the jurisdiction of the Federal Maritime Commission because they are not operating from U.S. ports. This allows an unfair competitive advantage to the foreign carriers operating through the Canadian ports because such carriers are not required to file tariffs with the Federal Maritime Commission and they are not subject to the anti-rebating and anti-discrimination provisions of our law. These inequities not only undermine the purpose of the Shipping Act of 1916, but also deprive the United States of income generated from the passage of tonnage through U.S. ports on U.S. carriers.

S. 2414 will only require that carriers competing for business in the United States through ports in nations contiguous to the United States file their tariffs with the Federal Maritime Commission and be subject to the other provisions of the Shipping Act to the same extent as carriers operating out of U.S. ports. It is simple equity to put U.S. ocean carriers and ports on an equal footing with their competitors who operate through nations contiguous to the United States.

Yours sincerely,

ALBERT E. MAY, *Executive Vice President.*

MARITIME TRADES DEPARTMENT,
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., June 4, 1982.

Hon. SLADE GORTON,
Chairman, Subcommittee on Merchant Marine, Senate Commerce, Science and Transportation Committee, Washington, D.C.

DEAR MR. CHAIRMAN: The AFL-CIO Maritime Trades Department, which represents eight and one-half million workers in forty-four allied trades, wishes to express its support for S. 2414, a bill to provide for jurisdiction over common carriers by water engaging in U.S. foreign commerce through the ports of nations contiguous to the United States.

We support the purpose of S. 2414 and its companion bill, H.R. 3637, to reduce U.S. foreign cargo diversion through Canadian ports by requiring that tariffs for such freight movements be filed with the Fedrral Maritime Commission. Hearings held by the House Merchant Marine Subcommittee and more recently by your subcommittee on May 25 have provided ample evidence of the need for this legislation.

The diversion of cargo through Canada by truck or rail has resulted in the loss of millions of dollars to our economy and thousands of jobs to our members in the longshore and related trades.

The Maritime Administration estimates that nearly 2.2 million tons of U.S. cargoes worth $4.3 billion moved via Canadian ports in 1980. This is a marked increase in both tonnage and dollar value over 1974 when 1.2.million tons of U.S. cargo worth $1.3 billion were transshipped through Canada. MarAd estimates indicate that in 1979 alone, as many as 5,000 jobs may have been lost to U.S. ports.

We believe that bringing diverted cargo movements under Federal Maritime Commission jurisdiction will deter the establishment of predatory rates. It will also protect American shippers by forbidding carriers from charging or collecting a greater,

lesser, or different rate for the same transportation service. At the same time, S. 2414 will not increase shipping charges for American shippers, restrict the movement of U.S. cargo, or force shippers to give up a Canadian or Mexican service. S. 2414 only requires that Canadian and similar carriers soliciting U.S. cargoes file their tariffs with the FMC and be subject to the provisions of the Shipping Act to the same extent as carriers operating out of U.S. ports. Essentially this measure simply requires all carriers to compete under the same rules.

Again, the MTD strongly supports S. 2414 and urges its prompt enactment. We trust that the foregoing comments will be given your full review and consideration, and request their inclusion in the hearing record.

Sincerely,

FRANK DROZAK, *President.*

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP—GROUPE INTER-PARLEMENTAIRE CANADA-ETATS-UNIS,

June 15,1982.

Hon. SLADE GORTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GORTON: In view of the fact that you were a delegate to the last meeting of the Canada-United States Inter-Parliamentary Group in Key Largo, you will be interested in the attached letter we sent to Rep. Dante Fascell. This follows a procedure establishaed by the Group for warning legislators on the other side of possible legislation which could erupt into bilateral problems.

In this case, HR 3637 respecting cargo diversion on the east coast also has a relevance to the shipments of cargo through Seattle. We understand there is now a Senate version of the bill.

Yours Sincerely,

IAN WATSON, MP,
Co-Chairman, Canadian Section.

HENRY D. HICKS,
Co-Chairman, Canadian Section.

Enclosure.

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP—GROUPE INTER-PARLEMENTAIR CANADA-ETATS-UNIS,

June 15, 1982.

Hon. DANTE B. FASCELL,
Co-Chairman, Canada-United States, Inter-Parliamentary Group, U.S. Section, Chairman, Subcommittee on International, Operations of the House Committee on Foreign Affairs, House of Representatives, Washington, D.C.

DEAR DANTE: As Canadian co-chairman of the Canada-United States Inter-Parliamentary Group, we would like to draw your attention to a bill which has been reported out of both the House Committee on Merchant Marine and Fisheries and the House Committee on Energy and Commerce and is due to be debated on the floor of the House. Mindful of the Group's established procedure for warning the other side of bilateral problem areas which could erupt, we wish to alert you to the Canadian concern over this bill.

In our view, the bill, HR 3637, amending the U.S.D Shipping Act of 1916 with respect to the definition of "common carriers engaged in foreign commerce to and from the United States" will have the effect of imposing restrictive and unreasonable regulations on trade between Canadian and third country ports. Further, we consider that it reflects a U.S. regional interest which fails to take into account the relative balance in cargo movements which become evident if the overall picture is examined.

The focus of Canadian concern is that the bill would extend the jurisdiction of the Federal Maritime Commission (FMC), a regulatory agency established by and responsible to Congress, to commom carriers operating from such ports as Montreal. It would require them to file with the FMC tariffs showing all rates and charges for transportation of cargo to and from United States ports and foreign ports and also to file any changes in such rates. It gives the FMC the authority to disapprove a rate if it finds it to be unreasonablly high or low.

The impetus for the measure appears to have come from U.S. east coast ports which have complained they are losing traffic from cargo diverted by competing systems using the port of Montreal. The primary company involved is Cast North

America Ltd. Under the Cast system, cargo is picked up in the United States, transported by rail or truck to Montreal and shipped overseas on a Cast vessel. The company offers a door-to-door containerized freight system between the U.S. and European points with a single rate quoted for the whole operation and a remarkably simplified documentation procedure. Cast has built up an efficient intermodal network of ship, rail and truck connections with specially built flatcars and truck chassis. It has been able to offer competitively low rates due to the use of unique combined bulk/container ships. It utilizes the very well equipped terminals in Montreal and Antwerp. Mainly as a result of Cast's favourable rates and in steamlined system that has been, in the east, in the past several years, a significant shift in U.S. origin or destination cargo from U.S. east coast ports to Montreal as U.S. mid-west shippers seize thsi cost-effective system for reaching export markets in Europe.

Under the present Shipping Act as interpreted by the courts, the FMC has had until now no jurisdiction over the ocean segment of this intermodal type of cargo shipment. H.R. 3637 would require that Cast and similar carriers file their rates with the FMC and be subject for their operations out of Montreal to the other provisions of the Shipping Act in the same extent as carriers operating out of U.S. ports.

Canada views this as an attempt to regulate a part of its maritime trade between Canada and third countries. We would like to draw to you attention the diplomatic note which the Canadian government has sent Washington arguing that this legislation would contribute to an attempt by the United States "to exercise unacceptable extra-territorial jurisdiction". (See Appendix A) We would also like to draw to your attention the fact that the U.S. Department of State examined the bill and stated to the Committee that Canadian objections in regard to its extra-territoriality implications are justified under accepted principles of international law.

It appears to Canadians that in responding to complaints from one region of the United States, the supporters of this bill have failed to see the overall pattern in respect to cargo movements of the countries. A significant amount of containers of Canadian origin and destination are carried through U.S. ports, especially Seattle, on the west coast. While it is true that in recent years there has been some shift of U.S. cargo movements from the U.S. east coast ports to Canadian east coast ports, overall there has been a relative balance due to the large quaniity of Canadian cargo carried through the U.S. west coast ports. Looking at the whole picture one observes that there appears to be a strong geographic as well as an economic arguement for the use of Montreal on the east coast and Seattle on the west coast which may result in the most efficient trade flows benefitting the exports of both countries. To disturb this pattern by disruptive regulatory measures by the United States which might lead to reciprocal actions by Canada would not be in the interest of either country.

Finally, both countries may be affected by the fact that competition may be lessened by this legislation. U.S. law now permits the grouping of carriers into shipping conferences and authorizes them to fix rates but it does so in the knowledge that competition from non-conference carriers will keep the shipping conferences from unfair cartel-type rates. Neither the U.S. nor Canadian exporters or consumers would benefit if the large shipping conferences serving the North Atlantic ports are able to exercise unchecked market power once this competitive check is removed. In strongly opposing enactment of the bill, the U.S. Department of Justice has already pointed out that the FMC would be empowered by this bill to disapprove rates through Canadian ports on the ground that they are discriminatory, or so high or so low as to be detrimental to U.S. commerce. It concluded that "such action would remove a competitive check on the power of North Atlantic Conferences".

We bring to your attention the Canadian concern in respect to this bill in the hope that when the bill comes for debate on the floor of the House you might convey to participants why Canada opposes a measure which could put an unfortunate and unnecessary strain on the bilateral relationship.

Yours Sincerely,

IAN WATSON, M.P.,
Co-Chairman, Canadian Section.

HENRY D. HICKS,
Co-Chairman, Canadian Section.

[Note No. 491]

CANADIAN EMBASSY—AMBASSADR DU CANADA,
Washington, D.C., September 11, 1981.

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the Embassy's Note No. 257 of June 10, 1981 and to pro-

posed legislation being considered as Bill H.R. 3637 in the House of Representatives of the United States of America in Congress.

The Embassy has the further honour to inform the Department that recent amendments to the proposed legislation have been examined by the Government of Canada in light of the concerns expressed in the Embassy's earlier note. The Government of Canada continues to have serious concerns that Bill H.R. 3637 will have the effect of purporting to regulate some aspects of Canadian maritime trade and ocean carriage between Canada and third countries. The Bill, as drafted at present, would, under certain circumstances consider Canadian and third country carriers operating between Canadian ports and third countries as engaged in the foreign commerce of the United States and the Bill would extend the jurisdiction of the Federal Maritime Commission to such carriers and hence to the terms of carriage they offer to their customers.

The Government of Canada recognizes that Bill H.R. 3637 prescribes certain conditions that must be met before the Shipping Act, 1916, would become operative. These conditions relate to circumstances in which a Canadian carrier, directly or through an agent, advertises and arranges for a shipment within the United States and engages to transport the property from a point within the United States to a Canadian port. The Government of Canada clearly recognizes that the Government of the United States of America has jurisdiction to regulate the various modes of transportation of property in the United States segment of a transborder movement of such goods. The Government of Canada does not believe that the United States segment of a transborder movement of property and undoubted United States jurisdiction over that movement justify the assertion of jurisdiction over Canadian and third country ocean carriers operating between Canadian ports and third countries. In the opinion of the Government of Canada the assertion of such jurisdiction implies an extra-territorial effect to United States domestic legislation that does not recognize the paramountcy of Canadian law and policy over the movement of property from Canadian ports to third countries.

The Embassy has the further honour to remind the Department of the points made in its earlier note concerning the inconsistency of Bill H.R. 3637 with established principles of international trade and maritime practices. The Canadian government continues to believe that shippers in both Canada and the United States benefit from the efficient and cost-effective transportation systems which entail the carriage of containers through the ports of each other to and from third countries, and that regulatory or legislative measures aimed at impeding this efficient movement of goods would be to the detriment of the trade of both countries.

The Embassy wishes to conclude by requesting that the Department of State make the above views known to the House of Representatives and to recommend that Bill H.R. 3637, even as amended, not be enacted.

The Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

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